

**LAWS AND RESOLUTIONS
OF THE STATE OF MONTANA**

**Enacted by the
FIFTY-NINTH LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 3, 2005, through April 21, 2005**

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Table of Contents

Volume I

Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1 - 301

Volume II

Chapters 302 - 534

Volume III

Chapters 535 - 607
House Joint Resolutions
House Resolutions
Senate Joint Resolutions
Senate Resolutions
2004 Ballot Issues
Index to Appropriations
General Index
Tables
 Code Sections Affected
 Session Laws Affected
 Senate Bill to Chapter Number
 House Bill to Chapter Number
 Chapter Number to Bill Number
 Effective Dates By Chapter Number
 Effective Dates By Date
 Session Law to Code
 2004 Ballot Issues

Volume I

Officers and Members of the Montana Senate	
Officers and Members of the Montana House of Representatives	
Title Contents of Bills and Resolutions	
House and Senate Bills	i
House Joint Resolutions	ciii
House Resolutions.....	cvi
Senate Joint Resolutions	cvi
Senate Resolutions.....	cix
Chapters 1 - 301	3

OFFICERS AND MEMBERS OF THE MONTANA SENATE

2005

50 Members

27 Democrats

23 Republicans

OFFICERS

President.....Jon Tester
 President Pro Tempore Dan Harrington
 Majority Leader.....Jon Ellingson
 Majority Whips.....Carolyn Squires, Trudi Schmidt
 Minority Leader Bob Keenan
 Minority Whips.....Corey Stapleton, Robert Story
 Secretary of the Senate Bill Lombardi

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Keenan, Bob	(R)	5	PO Box 697, Bigfork MT 59911-0697
Kitzenberg, Sam	(R)	18	130 Bonnie St Apt 1, Glasgow MT 59230-2101
Laible, Rick	(R)	44	529 Moose Hollow Rd, Victor MT 59875-9303
Larson, Lane	(D)	22	1417 Cedar Canyon Rd, Billings MT 59101-6440
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Lind, Greg	(D)	50	PO Box 16720, Missoula MT 59808-6720
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Pease, Gerald	(D)	21	PO Box 556, Lodge Grass MT 59050-0556
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**OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES**

2005

100 Members

50 Democrats

50 Republicans

OFFICERS

Speaker.....Gary Matthews
House Democratic Leader.....David Wanzenried
House Democratic Floor Leader.....John Parker
House Democratic Whips.....Bob Bergren, Gail Gutsche
House Republican Leader.....Roy Brown
House Republican Floor Leader.....Michael Lange
House Republican Whips Debby Barrett, Dennis Himmelberger
Chief Clerk of the House.....Marilyn Miller

MEMBERS

Name	Party	District	Preferred Mailing Address
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Arntzen, Elsie	(R)	53	850 Senora Ave, Billings MT 59105-2051
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TITLE CONTENTS

HOUSE AND SENATE BILLS

<u>Chapter</u>		<u>Page</u>
1	(<i>House Bill No. 1; Witt</i>) APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	3
2	(<i>House Bill No. 38; McNutt</i>) LIMITING THE EXEMPTION OF LAND BY A PURELY PUBLIC CHARITY TO 160 ACRES FOR EXEMPTIONS APPLIED FOR AFTER DECEMBER 31, 2004; REQUIRING THAT AN APPLICATION FOR EXEMPTION CONTAIN A LEGAL DESCRIPTION OF THE PROPERTY; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	3
3	(<i>House Bill No. 84; Kaufmann</i>) CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH OF INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT PROPERTY TAX RATE IS TO BE REDUCED; AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	8
4	(<i>House Bill No. 193; Waitschies</i>) PROVIDING FOR THE RECAPTURE OF A QUALIFIED ENDOWMENT TAX CREDIT IN THE TAX YEAR OF RECOVERY WHEN A CHARITABLE GIFT THAT GAVE RISE TO THE CREDIT IS RECOVERED BY THE TAXPAYER; INCLUDING AS INCOME IN THE YEAR THAT A CHARITABLE GIFT IS RECOVERED BY THE TAXPAYER THE AMOUNT DEDUCTED THAT IS ATTRIBUTABLE TO THE CHARITABLE GIFT; AMENDING SECTIONS 15-1-230, 15-30-166, 15-31-161, AND 15-31-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE	10
5	(<i>House Bill No. 194; Matthews</i>) CLARIFYING THE REPORTING REQUIREMENTS FOR THE QUARTERLY PAYMENT OF OIL AND NATURAL GAS PRODUCTION TAXES; CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES ALLOCATED TO EACH COUNTY; AMENDING SECTIONS 15-36-311 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	12
6	(<i>House Bill No. 447; Gallik</i>) PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAM; REPEALING STATUTORY TEACHERS' AND BLUE-COLLAR PAY SCHEDULES; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-304, 2-18-312, AND 2-18-703, MCA; REPEALING SECTIONS 2-18-313 AND 2-18-315, MCA; AND PROVIDING AN EFFECTIVE DATE.	15
7	(<i>Senate Bill No. 60; Esp</i>) ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT BY RULE THE NUMBER	

	OF BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE, NOT TO EXCEED THE NUMBER OF BEDS ALLOWED BY FEDERAL LAW; DELETING THE LIMITATION ON THE NUMBER OF ACUTE CARE INPATIENT BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE; AMENDING SECTION 50-5-233, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	23
8	(<i>Senate Bill No. 240; Cooney</i>) REAUTHORIZING CERTAIN STATE AGENCY LOANS FROM THE INTERCAP PROGRAM; PROVIDING THAT THESE LOANS PREVIOUSLY AUTHORIZED BY THE LEGISLATURE CONSTITUTE STATE DEBT; RATIFYING THE TERMS OF AND SECURITY FOR THESE LOANS AS CURRENTLY EMBODIED IN THE LOAN AGREEMENTS WITH THE MONTANA BOARD OF INVESTMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	24
9	(<i>House Bill No. 21; Gallik</i>) EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	25
10	(<i>House Bill No. 27; Noennig</i>) ALLOWING THE MONTANA HISTORICAL SOCIETY TO CONDUCT A BIENNIAL REVIEW RATHER THAN A QUARTERLY AUDIT OF THE FUNDS OF A NONPROFIT CORPORATION THAT MANAGES A STATE-OWNED HISTORIC SITE OR BUILDING; ALLOWING THE SOCIETY TO AUDIT THE FUNDS WHEN DETERMINED NECESSARY; AMENDING SECTION 22-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	25
11	(<i>House Bill No. 29; Golie</i>) REVISING THE DEFINITION OF SHORT-TERM WORKER FOR LEGISLATIVE BRANCH PURPOSES; AND AMENDING SECTIONS 2-18-601 AND 2-18-611, MCA.	26
12	(<i>House Bill No. 37; Lambert</i>) REQUIRING THAT INTEREST EARNED ON MONEY IN THE STATE LIVESTOCK PER CAPITA FEE ACCOUNT AND IN COUNTY PREDATORY ANIMAL CONTROL FUNDS BE DEPOSITED IN THE RESPECTIVE ACCOUNT OR FUNDS; AMENDING SECTIONS 15-24-925, 81-7-303, AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	28
13	(<i>House Bill No. 66; Jent</i>) CHANGING FROM MANDATORY TO DISCRETIONARY THE CREDIT, FOR EACH DAY OF INCARCERATION PRIOR TO CONVICTION, GRANTED AGAINST THE FINE WHEN A FINE IS LEVIED IN ADDITION TO A TERM OF IMPRISONMENT ON CONVICTION OF AN OFFENSE; AND AMENDING SECTION 46-18-403, MCA	29
14	(<i>House Bill No. 108; Furey</i>) REVISING THE DESIGNATION OF THE WAGE COLLECTION FUND; AMENDING SECTION 39-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	30
15	(<i>House Bill No. 118; McNutt</i>) REVISING BANKING LAWS; ELIMINATING THE PROHIBITION ON OUT-OF-STATE BANKS AND BANK HOLDING COMPANIES FROM ACQUIRING IN-STATE BANKS OR BRANCH BANKS BY CONSOLIDATION OR MERGER; AUTHORIZING CERTAIN ACTIVITIES AND ESTABLISHING REQUIREMENTS FOR A BANK RESULTING FROM CONSOLIDATION OR MERGER WITH RESPECT TO BRANCH BANKING; AUTHORIZING IN-STATE BANKS TO ESTABLISH OUT-OF-STATE BRANCH BANKS; REPEALING THE AUTHORIZATION OF OUT-OF-STATE BANKS TO DO BUSINESS IN MONTANA USING THEIR EXISTING CORPORATE NAME PROVIDED THEY DO NOT ENGAGE IN BANKING BUT ONLY LOAN MONEY; AMENDING SECTIONS 32-1-371, 32-1-372, AND 32-1-1001, MCA; AND REPEALING SECTION 32-1-103, MCA.	30

16	<i>(Senate Bill No. 14; Cooney)</i> ELIMINATING THE CAPITOL RESTORATION COMMISSION; AND REPEALING SECTIONS 5-17-201, 5-17-202, 5-17-203, 5-17-204, 5-17-205, 5-17-206, AND 5-17-207, MCA . .	33
17	<i>(Senate Bill No. 20; Roush)</i> REMOVING THE REQUIREMENT THAT A MUNICIPALITY DIVERT ITS WATER FROM AN A-CLOSED WATER BODY IN ORDER TO QUALIFY FOR THE CONSIDERATION FOR NONABANDONMENT OF A MUNICIPAL WATER RIGHT; INCLUDING A MUNICIPAL WATER SUPPLY THAT IS GOING TO BE USED AS APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AS A CRITERION FOR DETERMINING NONABANDONMENT; AND AMENDING SECTION 85-2-227, MCA . .	33
18	<i>(House Bill No. 77; Olson)</i> INCREASING THE APPLICATION AND RENEWAL FEES FOR SEPTIC CLEANING AND DISPOSAL LICENSES; REVISING THE ALLOCATION OF LICENSE FEE REVENUE; AMENDING SECTIONS 75-10-1203 AND 75-10-1212, MCA; AND PROVIDING AN EFFECTIVE DATE	34
19	<i>(House Bill No. 43; Musgrove)</i> REQUIRING OIL AND GAS PRODUCERS TO ITEMIZE CHARGES ASSESSED TO THE OWNER OF A NATURAL GAS ROYALTY; AMENDING SECTION 82-10-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	35
20	<i>(House Bill No. 78; Harris)</i> ELIMINATING THE REQUIREMENT THAT PRIOR TO ISSUING OR RENEWING A PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL MAKE A DETERMINATION OF FULL COMPLIANCE OR ISSUE A COMPLIANCE ORDER; AMENDING SECTION 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	36
21	<i>(House Bill No. 80; Campbell)</i> REVISING LAWS RELATING TO ENFORCEMENT OF CHILD SUPPORT TO ALLOW REFERRALS TO AND FROM OTHER IV-D PROGRAMS, INCLUDING TRIBAL PROGRAMS; AMENDING SECTIONS 40-5-201, 40-5-202, 40-5-203, 40-5-206, 40-5-226, 40-5-263, 40-5-271, 40-5-403, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-601, 40-5-701, 40-5-901, 40-5-906, 40-5-909, AND 40-5-923, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	38
22	<i>(House Bill No. 87; Ward)</i> TRANSFERRING RESPONSIBILITY FOR FLEET VEHICLE REGISTRATION FROM THE DEPARTMENT OF TRANSPORTATION TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 61-3-324 AND 61-3-325, MCA; AND PROVIDING AN EFFECTIVE DATE	65
23	<i>(House Bill No. 90; Kaufmann)</i> EXTENDING THE TERMINATION DATE FOR THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AND AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003	66
24	<i>(House Bill No. 101; Villa)</i> ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE A TERM PERMIT FOR A LOAD THAT IS IN EXCESS OF SPECIFIED LIMITS BUT THAT DOES NOT EXCEED 35,000 POUNDS IN EXCESS AXLE WEIGHT; AND AMENDING SECTION 61-10-125, MCA	66
25	<i>(House Bill No. 107; Jent)</i> UPDATING THE AUTHORITY OF AND REQUIREMENTS FOR THE DEPARTMENT OF ADMINISTRATION TO PLACE CERTAIN BUSTS, PLAQUES, STATUES, MEMORIALS, MONUMENTS, ART DISPLAYS, AND OTHER ITEMS IN THE CAPITOL, ON THE CAPITOL GROUNDS, OR IN STATE BUILDINGS ON THE CAPITOL COMPLEX; ELIMINATING THE PEARL HARBOR	

	MEMORIAL COMMITTEE AND CERTAIN ADMINISTRATIVE PROVISIONS RELATING TO THE PEARL HARBOR MEMORIAL COMMITTEE AS A RESULT OF THE COMPLETION OF THE MEMORIAL TO PEARL HARBOR SURVIVORS; AMENDING SECTIONS 2-17-804, 2-17-807, 2-17-808, AND 2-17-813, MCA; AND REPEALING SECTIONS 5-17-301, 5-17-302, AND 5-17-303, MCA	68
26	(<i>House Bill No. 126; Mendenhall</i>) SIMPLIFYING AND CLARIFYING THE WORKERS' COMPENSATION ACT; CHANGING THE TERM "AVERAGE WEEKLY WAGE" TO "STATE'S AVERAGE WEEKLY WAGE"; AMENDING SECTIONS 17-6-317, 17-6-318, 39-11-103, 39-11-202, 39-71-116, 39-71-118, 39-71-401, 39-71-2211, AND 39-71-2312, MCA; REPEALING SECTIONS 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, AND 39-71-813, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.	72
27	(<i>House Bill No. 127; Mendenhall</i>) AMENDING THE DEFINITION OF "SERIOUSLY DEVELOPMENTALLY DISABLED" FOR THE PURPOSES OF CIVIL COMMITMENT; REMOVING THE CRITERION OF NEAR TOTAL CARE; AMENDING SECTION 53-20-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	90
28	(<i>House Bill No. 128; Jent</i>) PROVIDING THAT THE COMMISSION OR WARRANT OF AN OFFICER IN THE STATE'S ORGANIZED MILITIA MUST BE VACATED IF THE OFFICER IS CONVICTED OF A FELONY OR INCARCERATED IN A STATE OR FEDERAL CORRECTIONAL INSTITUTION; AND AMENDING SECTION 10-1-205, MCA	92
29	(<i>House Bill No. 168; Becker</i>) REVISING THE LAWS GOVERNING THE MONTANA INSURANCE GUARANTY ASSOCIATION; REMOVING THE MINIMUM DOLLAR AMOUNT FOR A COVERED PROPERTY OR CASUALTY CLAIM; CLARIFYING THE IMMUNITY WITH RESPECT TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTIONS 33-10-105 AND 33-10-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	92
30	(<i>House Bill No. 171; Cohenour</i>) CONFORMING WITH FEDERAL INCOME TAX LAW BY EXTENDING THE DUE DATE FOR FILING A MONTANA INDIVIDUAL INCOME TAX RETURN BY A PERSON, AND BY THE PERSON'S SPOUSE, SERVING IN A COMBAT ZONE OR A CONTINGENCY OPERATION; CLARIFYING THE DEFERMENT OF TAXES FOR A PERSON IN MILITARY SERVICE; AMENDING SECTION 15-30-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	94
31	(<i>House Bill No. 175; Cohenour</i>) ALLOWING AN INSURER TO WITHHOLD COURT-ORDERED RESTITUTION FROM BENEFITS PAYABLE TO AN INJURED WORKER CONVICTED OF THEFT OF WORKERS' COMPENSATION BENEFITS; AMENDING SECTION 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	95
32	(<i>House Bill No. 185; Harris</i>) AMENDING RECLAMATION BOND PROVISIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT PERTAINING TO MINES ON FEDERAL LANDS; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ACCEPT BONDS PAYABLE TO THE STATE OF MONTANA AND A FEDERAL LAND MANAGEMENT AGENCY;	

	AMENDING SECTIONS 82-4-338 AND 82-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	96
33	<i>(House Bill No. 190; Becker)</i> REVISING THE DEFINITION OF “VICTIM” IN LAWS RELATING TO THE RIGHT OF VICTIMS TO ATTEND CRIMINAL PROCEEDINGS; MAKING THE DEFINITION CONSISTENT WITH ASSAULT AND PARTNER OR FAMILY MEMBER ASSAULT LAWS; AMENDING SECTION 46-24-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	100
34	<i>(House Bill No. 195; Matthews)</i> REVISING LAWS GOVERNING FARM SCALES; PROVIDING A DEFINITION OF “ON-FARM SCALE”; CLARIFYING THE LICENSE RENEWAL DATE FOR ON-FARM SCALES; CLARIFYING LICENSE RENEWAL PERIODS FOR ON-FARM SCALES AND OTHER WEIGHING DEVICES; PROVIDING FOR LATE FEES FOR DELAYED LICENSE RENEWALS; PERMITTING THE DEPARTMENT OF LABOR AND INDUSTRY TO SEAL AND REMOVE WEIGHING DEVICES FOR FAILURE TO PAY FEES; PROHIBITING USE OF WEIGHING DEVICES REMOVED FROM SERVICE AND SEALED; AMENDING SECTIONS 30-12-101, 30-12-203, AND 50-50-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	101
35	<i>(House Bill No. 205; Parker)</i> REQUIRING THAT BOND FORFEITURES IN A FELONY CASE BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 46-9-511, MCA; AND PROVIDING AN EFFECTIVE DATE	104
36	<i>(House Bill No. 226; McAlpin)</i> CHANGING THE NAME OF THE SHERIFF’S DEPARTMENT TO THE SHERIFF’S OFFICE; AND AMENDING SECTIONS 2-15-1781, 7-3-1344, 7-4-2503, 7-4-2508, 7-4-2509, 7-4-2510, 7-4-3001, 7-32-2102, 7-32-2126, 10-4-102, 19-7-612, 19-7-801, 39-3-406, 40-6-402, 44-2-401, 44-5-506, AND 45-8-108, MCA	105
37	<i>(House Bill No. 274; Peterson)</i> AMENDING THE MONTANA AGRICULTURAL FEED LAWS TO INCREASE LICENSING AND REGISTRATION FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING, REGISTRATION, AND INSPECTION FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-202, 80-9-206, AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	116
38	<i>(House Bill No. 300; Gallik)</i> REVISING THE INSURANCE PRODUCER AND CONSULTANT CONTINUING EDUCATION ACT TO INCLUDE ADJUSTERS; AND AMENDING SECTIONS 33-17-1201, 33-17-1202, 33-17-1203, 33-17-1204, AND 33-17-1205, MCA	123
39	<i>(House Bill No. 381; Callahan)</i> REQUIRING THAT A WORKERS’ COMPENSATION CLAIMANT AND THE INSURER OR AN AUTHORIZED THIRD-PARTY EXAMINER ATTEND ANY SCHEDULED MEDIATION CONFERENCE IN PERSON OR PARTICIPATE BY TELEPHONE CONFERENCE CALL; AND AMENDING SECTIONS 39-71-2410 AND 39-71-2411, MCA	125
40	<i>(House Bill No. 14; Golie)</i> BENEFITING MOUNTAIN GOATS BY ALLOWING THE ANNUAL ISSUANCE OF ONE MOUNTAIN GOAT LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES;	

	DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MOUNTAIN GOATS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	127
41	(<i>House Bill No. 20; Dickenson</i>) REVISING THE PROCESS FOR DETERMINING THE ELIGIBILITY OF CHILDREN FOR ADMITTANCE TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; AMENDING SECTION 20-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	127
42	(<i>House Bill No. 24; Golie</i>) PROVIDING THAT A STATEMENT, AFFIRMATION, GESTURE, OR CONDUCT EXPRESSING APOLOGY, SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, OR BENEVOLENCE RELATING TO THE PAIN, SUFFERING, OR DEATH OF A PERSON THAT IS MADE TO THE PERSON, THE PERSON'S FAMILY, OR A FRIEND OF THE PERSON OR OF THE PERSON'S FAMILY IS INADMISSIBLE FOR ANY PURPOSE IN A CIVIL ACTION FOR MEDICAL MALPRACTICE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	128
43	(<i>House Bill No. 25; Roberts</i>) PROVIDING THAT FOR PURPOSES OF A MALPRACTICE CLAIM, A HEALTH CARE PROVIDER IS NOT LIABLE FOR AN ACT OR OMISSION BY A PERSON OR ENTITY THAT WAS NOT AN EMPLOYEE OR AGENT OF OR OTHERWISE UNDER THE CONTROL OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	129
44	(<i>House Bill No. 26; Golie</i>) PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.	129
45	(<i>House Bill No. 39; Gutsche</i>) ABOLISHING UNNECESSARY LIMITS ON THE OUT-OF-STATE PURCHASE OF RIFLES AND SHOTGUNS BY MONTANA RESIDENTS AND BY NONRESIDENTS IN MONTANA; AND REPEALING SECTIONS 45-8-341 AND 45-8-342, MCA	130
46	(<i>House Bill No. 50; Roberts</i>) DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AMEND THE STATE LIST OF ENDANGERED SPECIES TO REMOVE ANY SPECIES OR SUBSPECIES ON THE LIST, WITHOUT LEGISLATIVE APPROVAL, IF THAT SPECIES OR SUBSPECIES IS REMOVED FROM THE FEDERAL LIST OF NATIVE ENDANGERED SPECIES; AMENDING SECTION 87-5-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	130
47	(<i>House Bill No. 54; Small-Eastman</i>) ALLOWING THE PAYMENT OF ALL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; ALLOWING THE PAYMENT OF CERTAIN LICENSING FEES BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; AND AMENDING SECTIONS 15-1-231 AND 30-16-301, MCA	132
48	(<i>House Bill No. 56; Warden</i>) MAKING PERMANENT THE FISHING ACCESS ENHANCEMENT PROGRAM, WHICH PROVIDES INCENTIVES TO LANDOWNERS WHO GRANT ACCESS TO OR ACROSS PRIVATE LAND FOR PUBLIC FISHING, BY REPEALING THE PROGRAM TERMINATION DATE; PROVIDING FOR BIENNIAL	

	REPORTS REGARDING PROGRAM SUCCESS AND RECOMMENDATIONS BY THE REVIEW COMMITTEE; AMENDING SECTION 87-1-269, MCA; AND REPEALING SECTION 6, CHAPTER 196, LAWS OF 2001	133
49	(<i>House Bill No. 64; Brown</i>) PROVIDING FOR QUALIFICATIONS FOR MEDICAL MALPRACTICE EXPERT WITNESSES; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	135
50	(<i>House Bill No. 79; Golie</i>) MAKING PERMANENT THE HABITAT ACQUISITION PROGRAM THAT AUTHORIZES THE FISH, WILDLIFE, AND PARKS COMMISSION TO SECURE, DEVELOP, AND MAINTAIN WILDLIFE HABITAT; ENSURING THAT PROGRAM FUNDING SOURCES ARE MAINTAINED, INCLUDING SPECIAL LICENSE FEES THAT ARE DEDICATED TO THE PROGRAM; REPEALING SECTION 12, CHAPTER 598, LAWS OF 1987, SECTION 3, CHAPTER 319, LAWS OF 1991, AND SECTIONS 1 AND 2, CHAPTER 241, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	136
51	(<i>House Bill No. 81; Ross</i>) REPEALING THE TERMINATION DATE FOR SUPPLEMENTAL GAME DAMAGE LICENSES; REPEALING SECTION 4, CHAPTER 590, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	136
52	(<i>House Bill No. 82; Ross</i>) REPEALING THE TERMINATION DATE FOR EITHER-SEX OR ANTLERLESS ELK PERMITS FOR LANDOWNERS WHO OFFER FREE PUBLIC ELK HUNTING; REPEALING SECTION 4, CHAPTER 519, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	137
53	(<i>House Bill No. 86; Kaufmann</i>) SIMPLIFYING THE APPORTIONMENT OF TAYLOR GRAZING ACT MONEY TO COUNTIES; AMENDING SECTION 17-3-222, MCA; AND PROVIDING AN EFFECTIVE DATE.	137
54	(<i>House Bill No. 97; Lange</i>) PROVIDING THAT A CONVICTION FOR NEGLIGENT HOMICIDE WHILE OPERATING A VEHICLE WHEN UNDER THE INFLUENCE OR FOR NEGLIGENT VEHICULAR ASSAULT IS A PRIOR CONVICTION FOR PURPOSES OF THE PENALTY IMPOSED UPON A PERSON WHO IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT AND WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR CERTAIN OFFENSES; INCREASING THE PENALTY FOR A FIFTH OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT; AND AMENDING SECTIONS 61-8-731 AND 61-8-734, MCA	137
55	(<i>House Bill No. 110; Furey</i>) CREATING AN IDENTITY THEFT PASSPORT PROGRAM	140
56	(<i>House Bill No. 112; Musgrove</i>) AUTHORIZING AND ENCOURAGING STATE AGENCIES TO ALLOW A STATE EMPLOYEE TO WORK FROM HOME OR AN ALTERNATIVE WORK SITE INSTEAD OF A CENTRAL WORKPLACE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT POLICIES; AMENDING SECTION 2-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	141
57	(<i>House Bill No. 114; Witt</i>) EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LAND; AMENDING SECTION 77-1-130, MCA, SECTION 5, CHAPTER 461, LAWS OF 1997, AND SECTION 6, CHAPTER 270, LAWS OF 2001; AND PROVIDING A TERMINATION DATE.	143
58	(<i>House Bill No. 116; Barrett</i>) REQUIRING THAT SIGNIFICANT CHANGES IN OPERATING BUDGETS AND THAT SIGNIFICANT	

	PROGRAM TRANSFERS BE REPORTED TO THE APPROPRIATE INTERIM COMMITTEE; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN EFFECTIVE DATE.	145
59	(<i>House Bill No. 131; Clark</i>) CLARIFYING THE LANGUAGE AND PENALTIES REGARDING THE UNLAWFUL POSSESSION, SHIPPING, TRANSPORTATION, SALE, PURCHASE, OR EXCHANGE OF GAME FISH, BIRDS, GAME ANIMALS, AND FUR-BEARING ANIMALS; AMENDING SECTIONS 87-1-102, 87-3-111, 87-3-112, 87-3-115, 87-3-117, AND 87-3-118, MCA; AND REPEALING SECTION 87-3-113, MCA . . .	147
60	(<i>House Bill No. 138; Roberts</i>) REQUIRING THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY TO ESTABLISH SCREENING PANELS FOR DISCIPLINARY MATTERS; AUTHORIZING SCREENING PANELS TO OVERSEE REHABILITATION PROGRAMS; AND AMENDING SECTIONS 37-3-201 AND 37-4-201, MCA.	155
61	(<i>House Bill No. 139; Gallik</i>) CLARIFYING PROVISIONS REGARDING RULES AND REGULATIONS OF THE MONTANA NATIONAL GUARD; ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE; CLARIFYING THE GOVERNOR'S AND THE ADJUTANT GENERAL'S AUTHORITY TO PRESCRIBE RULES AND REGULATIONS; AND AMENDING SECTIONS 10-1-104 AND 10-1-105, MCA.	155
62	(<i>House Bill No. 144; Kaufmann</i>) UPDATING THE MONTANA INTEGRATED WASTE MANAGEMENT ACT; DEFINING THE TERMS "REUSE" AND "SOURCE REDUCTION"; ESTABLISHING TARGET RATES FOR RECYCLING AND COMPOSTING; AMENDING SECTIONS 75-10-802, 75-10-803, 75-10-804, 75-10-805, AND 75-10-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	156
63	(<i>House Bill No. 147; Clark</i>) DEFINING THE TERM "ROCK PRODUCTS"; ALLOWING A PERSON MINING ROCK PRODUCTS TO OPERATE MULTIPLE SITES MEETING SPECIFIED CRITERIA UNDER A SINGLE PERMIT; AUTHORIZING A LANDOWNER WHO ALLOWS ROCK PRODUCT MINING TO OBTAIN A MULTIPLE-SITE PERMIT; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, AND 82-4-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	159
64	(<i>House Bill No. 154; Jacobson</i>) ELIMINATING CERTAIN ANNUAL REPORTING REQUIREMENTS FOR CONSUMER LOAN BUSINESSES; AND AMENDING SECTION 32-5-308, MCA.	170
65	(<i>House Bill No. 155; Barrett</i>) PROVIDING THAT DISCLOSURES OR CERTAIN CONFLICTS OF INTEREST MUST BE MADE TO THE COMMISSIONER OF POLITICAL PRACTICES RATHER THAN THE SECRETARY OF STATE; AND AMENDING SECTION 2-2-131, MCA	171
66	(<i>House Bill No. 157; McKenney</i>) PROVIDING A FORMULA RATHER THAN A SET INTEREST RATE FOR USE IN DETERMINING THE RATES OF INTEREST TO BE PAID ON MINIMUM NONFORFEITURE AMOUNTS UNDER AN ANNUITY CONTRACT; AMENDING THE CONTRACT CHARGE; ALLOWING A REDUCTION FOR PREMIUM TAX PAID; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	171
67	(<i>House Bill No. 158; McKenney</i>) REVISING AND CLARIFYING INCOME TAX WITHHOLDING LAWS AS A RESULT OF THE TRANSFER OF THE ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE TAX FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; ELIMINATING THE REQUIREMENT THAT THE STATE TAX APPEAL BOARD CONSIDER A DIRECT APPEAL	

	FROM A DEPARTMENT OF REVENUE DETERMINATION REGARDING THE REPORTING OF WAGES EARNED BY AN UNEMPLOYMENT INSURANCE BENEFIT CLAIMANT; REVISING THE DEFINITIONS OF "EMPLOYEE", "EMPLOYER", AND "WAGES" AND DEFINING "SOLE PROPRIETOR" FOR WITHHOLDING TAX PURPOSES; ADOPTING THE INTERNAL REVENUE CODE DEFINITION OF "WAGES"; REVISING THE EXCEPTIONS TO THE DEFINITION OF "WAGES"; ELIMINATING CERTAIN DEFINITIONS AS THEY APPLY TO INCOME WITHHOLDING TAXES; CLARIFYING THE LIABILITY OF EMPLOYERS FOR FILING ANNUAL WITHHOLDING TAX STATEMENTS AND FOR THE PAYMENT OF WITHHOLDING TAXES; REVISING THE SCHEDULES FOR REMITTING WITHHOLDING TAXES; CLARIFYING PENALTIES AND INTEREST FOR NONCOMPLIANCE WITH WITHHOLDING TAX PROVISIONS; REVISING THE PROVISIONS FOR THE FILING OF WITHHOLDING TAXES ELECTRONICALLY; AMENDING SECTIONS 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-209, 15-30-210, 15-30-248, AND 39-51-2402, MCA; REPEALING SECTIONS 15-30-249, 15-30-250, 15-30-251, 15-30-256, AND 15-30-257, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	175
68	(<i>House Bill No. 160; Jacobson</i>) CLARIFYING THAT ADMINISTRATION, HEARINGS, INJUNCTION, AND ENFORCEMENT AUTHORITY PROVIDED BY THE DEPARTMENT OF LABOR AND INDUSTRY UNDER BUILDING CONSTRUCTION CODES APPLIES TO PLUMBING, ELECTRICAL, AND ELEVATOR CODES; MAKING THE MISDEMEANOR OFFENSE PROVISIONS OF THE STATE PLUMBING, ELECTRICAL, AND ELEVATOR CODES CONSISTENT WITH THE BUILDING CODE; INCREASING BOILER INSPECTION AND CERTIFICATION FEES HANDLED BY THE DEPARTMENT; AMENDING SECTIONS 50-60-103, 50-60-105, 50-60-109, 50-60-110, AND 50-74-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE.	185
69	(<i>House Bill No. 161; McNutt</i>) REVISING CERTAIN WORKERS' COMPENSATION LAWS; REQUIRING INSOLVENT INSURERS TO PROVIDE CLAIM SUMMARY INFORMATION; CLARIFYING THE PENALTY PROVISIONS FOR LATE REPORT FILING BY INSURERS; REMOVING THE MEDICAL PROVIDER OATH REQUIREMENT FOR DOCUMENTING THE PROVISION OF SERVICES; CLARIFYING THE UNINSURED EMPLOYERS' FUND CLAIM REIMBURSEMENT AUTHORITY; UPDATING TERMINOLOGY RELATING TO HOSPITALS; REVISING SUBSEQUENT INJURY FUND ASSESSMENT PROVISIONS; REVISING PLAN NO. 1 APPROVAL CRITERIA; SPECIFYING THAT INTEREST ON PLAN NO. 1 LIQUIDATED SECURITY DEPOSITS IS TO BE USED TO PAY CLAIMS; REQUIRING AN INSURER TO SUBMIT NOTICE OF COVERAGE AND CANCELLATIONS ELECTRONICALLY TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROHIBITING THE SPLITTING OF WORKERS' COMPENSATION RISKS AMONG VARIOUS INSURANCE PLANS; ELIMINATING THE WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL; AMENDING SECTIONS 39-71-306, 39-71-315, 39-71-504, 39-71-704, 39-71-915, 39-71-2105, 39-71-2108, 39-71-2203, 39-71-2204, 39-71-2205, 39-71-2336, 39-71-2337, AND 39-71-2339, MCA; REPEALING SECTION 2-15-1709, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. . .	187
70	(<i>House Bill No. 178; Taylor</i>) REVISING THE LAWS RELATING TO WATER USE; CHANGING THE NAME OF THE WATER RIGHT	

TRANSFER CERTIFICATE TO THE WATER RIGHT OWNERSHIP UPDATE FORM; CLARIFYING THAT THE DEFINITION OF "APPROPRIATE" MEANS THE USE OF WATER FOR A BENEFICIAL USE; PROVIDING THAT TEMPORARY CHANGES OR LEASES FOR INSTREAM FLOW TO MAINTAIN OR ENHANCE INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IS AN APPROPRIATION; CLARIFYING THAT CERTAIN ACTIONS ON AN APPLICATION FOR A CHANGE IN APPROPRIATION RIGHT ARE THE SAME AS ACTIONS ON AN APPLICATION FOR A PERMIT; CLARIFYING THAT REVOCATION OR MODIFICATION APPLIES TO CHANGES IN APPROPRIATION RIGHTS; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION NOTIFY THE COUNTY CLERK AND RECORDER OF EACH TRANSFER FILED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT PROVIDE AN ADEQUATE SUPPLY OF WATER RIGHT TRANSFER CERTIFICATE FORMS TO EACH COUNTY CLERK AND RECORDER IN THE STATE; ELIMINATING THE REQUIREMENT THAT UPON REQUEST OF THE DEPARTMENT THE COUNTY CLERK AND RECORDER SHALL SEND TO THE DEPARTMENT A COPY OF ANY REALTY TRANSFER CERTIFICATES THAT DISCLOSE A TRANSFER OF WATER RIGHTS; ELIMINATING THE ADJUSTMENT OF FEES TO COVER THE COSTS INCURRED BY THE COUNTY CLERK AND RECORDERS IN PROCESSING WATER RIGHT OWNERSHIP UPDATE FORMS; AMENDING SECTIONS 15-7-305, 15-7-308, 85-2-102, 85-2-117, 85-2-307, 85-2-308, 85-2-310, 85-2-314, 85-2-316, 85-2-421, 85-2-423, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

197

- 71 *(House Bill No. 180; Lake)* REVISING CERTAIN PROCEDURES FOR FILING APPLICATIONS WITH THE SECRETARY OF STATE REGARDING THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS; ELIMINATING CERTAIN REQUIREMENTS THAT DUPLICATE COPIES OF CERTAIN APPLICATIONS, CERTIFICATES, AND REGISTRATIONS WITH RESPECT TO THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS BE FILED WITH THE SECRETARY OF STATE; SPECIFYING REQUIREMENTS FOR REGISTRATION OF A FOREIGN LIMITED PARTNERSHIP; AMENDING SECTIONS 30-13-204, 30-13-208, 30-13-210, 30-13-212, 32-1-112, 35-1-1309, 35-2-119, 35-2-1109, 35-8-205, 35-8-206, 35-8-212, 35-10-113, 35-10-622, 35-10-627, 35-12-606, 35-12-1302, AND 35-12-1304, MCA; AND REPEALING SECTION 35-1-1207, MCA

211

- 72 *(House Bill No. 183; Franklin)* PERMITTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK A FEDERAL HOME AND COMMUNITY-BASED SERVICES WAIVER OF THE MEDICAID STATE PLAN IN ORDER TO INCREASE FLEXIBILITY IN PROVIDING SERVICES FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN; AND AMENDING SECTIONS 53-6-401 AND 53-6-402, MCA

219

- 73 *(House Bill No. 184; McAlpin)* REVISING THE LAWS RELATING TO LIBRARY FEDERATIONS; REMOVING THE DESIGNATION OF FEDERATION HEADQUARTERS LIBRARY; REVISING THE ESTABLISHMENT OF LIBRARY FEDERATIONS; CLARIFYING LIBRARIES' PARTICIPATION IN, AND FUNDING FOR, LIBRARY FEDERATIONS; ESTABLISHING THAT LIBRARY TRUSTEES BE APPOINTED ACCORDING TO FEDERATION BYLAWS; AMENDING SECTIONS 1-11-301, 22-1-103, 22-1-402, AND 22-1-404, MCA; AND REPEALING SECTION 22-1-403, MCA

221

74	<i>(House Bill No. 187; Bergren)</i> REVISING AND EXTENDING THE OLD FORTS TRAIL; AMENDING SECTION 60-1-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	223
75	<i>(House Bill No. 198; Villa)</i> DEFINING “STUDENT INTERN” IN THE CONTEXT OF STATE EMPLOYMENT, INCLUDING PAY, BENEFITS, AND OTHER EMPLOYEE RIGHTS AND RESPONSIBILITIES; AMENDING SECTIONS 2-18-101, 2-18-111, 2-18-601, 2-18-611, 2-18-701, 2-18-809, 2-18-1101, 2-18-1202, 2-18-1303, 39-29-101, AND 39-30-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	224
76	<i>(House Bill No. 207; McKenney)</i> REVISING FOR PURPOSES OF THE UNIFORM TOD SECURITY REGISTRATION LAWS THE DEFINITION OF “SECURITY ACCOUNT” TO INCLUDE CASH EQUIVALENTS AND INVESTMENT MANAGEMENT AND CUSTODY ACCOUNTS HELD IN TRUST; AMENDING SECTION 72-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	234
77	<i>(House Bill No. 209; McKenney)</i> PROVIDING THAT FINANCIAL INSTITUTIONS THAT ARE SUBJECT TO AND IN COMPLIANCE WITH REGULATION E OF THE FEDERAL ELECTRONIC FUND TRANSFER ACT MUST BE CONSIDERED TO BE IN COMPLIANCE WITH THE PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AMENDING SECTION 32-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	235
78	<i>(House Bill No. 215; Caferro)</i> CHANGING THE REFERENCES TO THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL TO REFERENCES TO THE MONTANA COUNCIL ON DEVELOPMENTAL DISABILITIES; REORGANIZING ASSOCIATED STATUTES; AMENDING SECTIONS 2-15-1869, 2-15-1870, 53-20-202, 53-20-203, AND 53-20-205, MCA; REPEALING SECTION 53-20-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	236
79	<i>(House Bill No. 224; Ross)</i> ALLOWING OPERATION OF A QUADRICYCLE WITHOUT A MOTORCYCLE ENDORSEMENT; AND AMENDING SECTIONS 61-5-102 AND 61-5-110, MCA.	239
80	<i>(House Bill No. 242; Lambert)</i> ALLOWING A TERMINALLY ILL RESIDENT OR NONRESIDENT YOUTH UNDER 17 YEARS OF AGE TO RECEIVE A FREE ONE-TIME MONTANA HUNTING LICENSE; PROVIDING TERMS AND CONDITIONS REGARDING LICENSURE; AMENDING SECTIONS 87-2-105 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	241
81	<i>(House Bill No. 255; Roberts)</i> AMENDING THE DEFINITION OF “MENTAL DISORDER”; SPECIFYING THAT A MENTAL DISORDER MAY CO-OCCUR WITH ADDICTION OR CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 53-21-102 AND 53-21-126, MCA	244
82	<i>(House Bill No. 273; Lambert)</i> EXEMPTING RURAL TRANSPORTATION PROVIDERS FROM PUBLIC SERVICE COMMISSION AUTHORITY; AMENDING SECTION 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	247
83	<i>(House Bill No. 285; Taylor)</i> ALLOWING A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, OR STALKING OR A PERSON ELIGIBLE TO PETITION FOR AN ORDER OF PROTECTION TO PARTICIPATE IN A PROGRAM THAT PROVIDES THE VICTIM OR ELIGIBLE PERSON WITH THE OPPORTUNITY TO REQUEST AND BE GRANTED A SUBSTITUTE ADDRESS THAT CAN BE USED FOR CERTAIN OFFICIAL PURPOSES; ESTABLISHING ELIGIBILITY FOR INDIVIDUALS TO PARTICIPATE IN THE PROGRAM; PROVIDING FOR	

THE ADMINISTRATION OF THE PROGRAM; ASSIGNING CERTAIN DUTIES TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR CESSATION OF PARTICIPATION IN THE PROGRAM; AND PROVIDING AUTHORITY TO THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE PROGRAM. 249

84 (House Bill No. 298; Clark) DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO USE AVAILABLE MONEY FROM THE FUTURE FISHERIES IMPROVEMENT PROGRAM, THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, THE RIVER RESTORATION PROGRAM, OR OTHER DEPARTMENT FUNDS AVAILABLE FOR VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES TO MATCH FUNDS FROM THE U.S. FISH AND WILDLIFE SERVICE STATE WILDLIFE GRANT PROGRAM OR OTHER AVAILABLE FEDERAL FUNDS IN ORDER TO ENTER INTO VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES FOR EMERGENCY INSTREAM FLOWS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 252

85 (House Bill No. 308; Malcolm) INCLUDING MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "APPROPRIATE"; INCLUDING A USE OF WATER FOR INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "BENEFICIAL USE"; REMOVING THE SPECIFIC STATUTORY GUIDANCE RELATED TO THE UPPER CLARK FORK RIVER BASIN AND INCLUDING THOSE REQUIREMENTS IN EXISTING STATUTES; REMOVING THE LIMITATION ON THE NUMBER OF TIMES THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY RENEW A TEMPORARY CHANGE APPLICATION; PROVIDING THAT AN APPROPRIATOR MUST PROVIDE NOTICE TO THE DEPARTMENT TO RENEW A TEMPORARY CHANGE AND INCREASING THE PERIOD FOR SUBMISSION OF NEW EVIDENCE OF ADVERSE EFFECTS TO OTHER WATER RIGHTS; PROVIDING THAT A TEMPORARY CHANGE AUTHORIZATION APPLICANT MUST INCLUDE CERTAIN INFORMATION REGARDING STREAM REACH, LOCATION, AND A STREAMFLOW MEASURING PLAN; REMOVING THE REQUIREMENT THAT AN APPLICANT FOR A TEMPORARY CHANGE PROVIDE NOTICE 30 DAYS PRIOR TO SUBMISSION OF APPLICATION; PROVIDING THAT THE MAXIMUM QUANTITY OF WATER THAT MAY BE DIVERTED TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY RESOURCES MAY NOT EXCEED THE HISTORICALLY DIVERTED AMOUNT, EXCEPT THAT ONLY THE AMOUNT HISTORICALLY CONSUMED, OR A SMALLER AMOUNT IF SPECIFIED IN THE LEASE AUTHORIZATION, MAY BE USED TO MAINTAIN OR ENHANCE STREAMFLOWS BELOW THE LESSOR'S POINT OF DIVERSION; REPEALING THE TERMINATION DATE FOR TEMPORARY CHANGES TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY; REPEALING THE TERMINATION DATE ON LEASING FOR THE PURPOSE OF MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY; AMENDING SECTIONS 85-2-102, 85-2-338, 85-2-402, 85-2-404, 85-2-407, 85-2-408, 85-2-419, AND 85-2-436, MCA; REPEALING SECTIONS 85-2-409, 85-2-439, AND 85-2-440, MCA, SECTION 6, CHAPTER 322, LAWS OF 1995, SECTION 14, CHAPTER 487, LAWS OF 1995, SECTION 3, CHAPTER 433, LAWS OF 2001, AND SECTION 3, CHAPTER 122, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 253

86	<i>(House Bill No. 312; Golie)</i> DIRECTING THE EXPENDITURE OF THE PORTION OF SMITH RIVER USER FEES DEPOSITED IN THE SMITH RIVER CORRIDOR ENHANCEMENT ACCOUNT FOR SPECIFIC PURPOSES RELATED TO THE PRESERVATION AND ENHANCEMENT OF THE SMITH RIVER CORRIDOR; AMENDING SECTION 23-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	281
87	<i>(House Bill No. 313; Sesso)</i> INCREASING THE MAXIMUM PERIOD OF TIME THAT THE DEPARTMENT OF CORRECTIONS MAY CONTRACT WITH PRERELEASE CENTERS FROM 10 YEARS TO 20 YEARS; AND AMENDING SECTION 53-1-203, MCA.	281
88	<i>(House Bill No. 347; Gutsche)</i> EXTENDING THE PERIOD OF TIME DURING WHICH REAL PROPERTY CAN BE CONVERTED OR DIVERTED FROM OPEN-SPACE LANDS; AMENDING SECTION 76-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	283
89	<i>(House Bill No. 350; Butcher)</i> INCREASING THE BID DEPOSIT FOR STATE LAND LEASES; AMENDING SECTION 77-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	284
90	<i>(House Bill No. 354; Noennig)</i> CLARIFYING THAT A LANDLORD MAY STORE AN ABANDONED MOBILE HOME ON THE PREMISES OF THE MOBILE HOME PARK; REQUIRING THAT THE SALE OF AN ABANDONED MOBILE HOME BE CONDUCTED PURSUANT TO SECTION 30-9A-610, MCA, OR AT A SHERIFF'S SALE; PROVIDING THAT THE LANDLORD HAS A LIEN ON THE MOBILE HOME AND THE PROCEEDS FROM THE SALE OF THE MOBILE HOME FOR CERTAIN AMOUNTS OWED TO THE LANDLORD BY THE MOBILE HOME OWNER; AND AMENDING SECTION 70-24-432, MCA	284
91	<i>(House Bill No. 397; Dowell)</i> CLARIFYING THE GOVERNANCE STRUCTURE AND CLASSIFICATION FOR HIGH SCHOOL DISTRICTS WITH HIGH SCHOOL BUILDINGS LOCATED IN MORE THAN ONE ELEMENTARY DISTRICT; AMENDING SECTIONS 20-3-351 AND 20-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	286
92	<i>(House Bill No. 400; Keane)</i> INCREASING AN INDIVIDUAL'S MINIMUM WEEKLY UNEMPLOYMENT BENEFIT AMOUNT FROM 15 PERCENT TO 19 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTION 39-51-2201, MCA; AND PROVIDING AN EFFECTIVE DATE	287
93	<i>(House Bill No. 401; Keane)</i> REVISING THE REQUIREMENTS FOR CRANE AND HOIST ENGINEERS' LICENSES; REQUIRING INSPECTIONS OF CRANES, HOISTS, AND OTHER EQUIPMENT; PROVIDING THAT A DEPARTMENT OF LABOR AND INDUSTRY CRANE INSPECTOR MAY REQUIRE THE SUSPENSION OF OPERATION OF CRANES, HOISTS, AND OTHER EQUIPMENT UNTIL DEFECTIVE CONDITIONS ARE CURED; PROVIDING THAT OPERATING A CRANE, HOIST, OR OTHER EQUIPMENT BEFORE CURING A DEFECTIVE CONDITION IS A MISDEMEANOR; AND AMENDING SECTIONS 50-76-103, 50-76-109, 50-76-110, AND 50-76-112, MCA.	287
94	<i>(House Bill No. 437; Caferro)</i> ALLOWING PAYMENT OF PUBLIC ASSISTANCE GRANTS BY ELECTRONIC TRANSFER; AND AMENDING SECTION 53-2-608, MCA.	290
95	<i>(House Bill No. 439; Wiseman)</i> DISALLOWING THE INDIVIDUAL INCOME TAX CREDIT FOR TAXES IMPOSED BY FOREIGN COUNTRIES IF A FEDERAL INCOME TAX CREDIT WAS TAKEN FOR	

MONTANA SESSION LAWS 2005

xiv

	THE FOREIGN TAXES; AMENDING SECTION 15-30-124, MCA; AND PROVIDING AN APPLICABILITY DATE	291
96	(<i>House Bill No. 508; Hendrick</i>) REVISING THE DEFINITION OF "EMPLOYER" FOR PURPOSES OF A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AND AMENDING SECTION 2-18-1303, MCA.	292
97	(<i>House Bill No. 557; Butcher</i>) RESTRICTING THE AMOUNT OF INSURANCE THAT A LENDER MAY REQUIRE A BORROWER TO MAINTAIN ON A LOAN SECURED BY REAL PROPERTY; AND AMENDING SECTION 32-5-306, MCA.	293
98	(<i>House Bill No. 564; Witt</i>) ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER OWNERSHIP OF THE MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS TO A QUALIFIED LOCAL GOVERNMENT ENTITY FOR LESS THAN FAIR MARKET VALUE; REQUIRING THE DEPARTMENT TO RETAIN THE RIGHT TO RECLAIM OWNERSHIP OF THE PROPERTY AT NO COST TO THE STATE IF THE PROPERTY CEASES TO BE USED AS AN AGRICULTURAL CENTER AND MUSEUM; AMENDING SECTION 23-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	294
99	(<i>House Bill No. 598; Gallik</i>) DELAYING THE EFFECTIVE DATE AND APPLICABILITY DATE OF THE LAW REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; AMENDING SECTIONS 9 AND 10, CHAPTER 441, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	295
100	(<i>House Bill No. 609; Taylor</i>) PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR A PERSON TRYING TO ENFORCE A WATER RIGHT; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	295
101	(<i>House Bill No. 612; Maedje</i>) REVISING APPLICATION PROCEDURES FOR COMMERCIAL TIMBER REMOVAL; REQUIRING LIABILITY INSURANCE AND PERFORMANCE BONDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REVIEW COMPLETED APPLICATIONS WITHIN 30 DAYS; AND AMENDING SECTION 77-5-212, MCA.	296
102	(<i>Senate Bill No. 6; Esp</i>) REVISING THE MONTANA SAFE HAVEN NEWBORN PROTECTION ACT; CLARIFYING THE AVAILABILITY OF INFORMATION CONCERNING COUNSELING; AMENDING SECTION 40-6-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	297
103	(<i>Senate Bill No. 8; Roush</i>) SIMPLIFYING AND CLARIFYING TERMINOLOGY AND PROCEDURES IN THE WORKERS' COMPENSATION ACT; SPECIFYING THAT STATUTORY AND COMMON-LAW RULES OF EVIDENCE ARE NOT APPLICABLE AT DEPARTMENT OF LABOR AND INDUSTRY HEARINGS UNDER THE WORKERS' COMPENSATION ACT; CLARIFYING WITH WHOM AND BY WHOM REPORTS OF ACCIDENTS, INJURIES, AND OCCUPATIONAL DISEASE ARE TO BE FILED; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR REPORTING REQUIREMENTS FOR INJURY OR OCCUPATIONAL DISEASE; CLARIFYING WHICH INSURER PAYS BENEFITS WHEN THERE IS A DISPUTE BETWEEN MULTIPLE INSURERS; CLARIFYING HOW LUMP-SUM PAYMENTS ARE ADDRESSED; REPEALING STATUTES ON PAYROLL COMPUTATION	

	AND WAGE DEFINITIONS COVERED BY OTHER STATUTES; REMOVING THE REQUIREMENT FOR ASSESSMENTS ON CERTAIN PUBLIC CORPORATIONS THAT FAIL TO FILE PAYROLL REPORTS; AMENDING SECTIONS 39-71-105, 39-71-107, 39-71-201, 39-71-204, 39-71-307, 39-71-407, 39-71-608, 39-71-703, 39-71-741, 39-71-743, AND 39-71-1006, MCA; REPEALING SECTIONS 39-71-302, 39-71-303, 39-71-308, AND 39-71-318, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	299
104	(<i>Senate Bill No. 9; Cromley</i>) EXTENDING THE TERM OF DRIVER'S LICENSES RENEWED BY MAIL; ALLOWING A SPOUSE OR DEPENDENT OF PERSONS STATIONED OUTSIDE MONTANA ON ACTIVE MILITARY DUTY TO RENEW A DRIVER'S LICENSE BY MAIL FOR A SECOND CONSECUTIVE TERM; AND AMENDING SECTION 61-5-111, MCA	311
105	(<i>Senate Bill No. 17; Cooney</i>) REVISING THE MEETING TIMES OF THE BOARD OF EXAMINERS; AMENDING SECTION 2-15-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	313
106	(<i>Senate Bill No. 23; Gillan</i>) EXPANDING THE TYPE OF PROPOSED MAJOR INFORMATION TECHNOLOGY PROJECTS TO BE INCLUDED IN A STATEWIDE INFORMATION TECHNOLOGY PROJECT BUDGET SUMMARY; REVISING THE REQUIRED CONTENT OF THE SUMMARY; AND AMENDING SECTIONS 2-17-526 AND 17-7-111, MCA	313
107	(<i>Senate Bill No. 26; Story</i>) ELIMINATING THE REQUIREMENT THAT THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ANALYZE THE AMOUNT OF STATE AND LOCAL TAX REVENUE FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS; REPEALING SECTION 69-3-1409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	317
108	(<i>Senate Bill No. 36; Esp</i>) DIRECTING THE CODE COMMISSIONER TO RECODIFY THE MONTANA CODE ANNOTATED ON A TITLE-BY-TITLE BASIS; AND AMENDING SECTION 1-11-204, MCA	317
109	(<i>Senate Bill No. 37; Schmidt</i>) REQUIRING A BANK, TRUST COMPANY, OR BROKERAGE FIRM ACTING AS CUSTODIAN OF AN INSURER'S SECURITIES TO AGREE TO INDEMNIFY THE INSURER FOR THE LOSS OF ANY OF THE INSURER'S SECURITIES RESULTING FROM THE INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CUSTODIAN WHILE THE INSURER'S SECURITIES ARE IN ITS CUSTODY	319
110	(<i>Senate Bill No. 50; McGee</i>) REVISING ALTERNATIVE ENERGY SYSTEMS LOAN LAWS; INCREASING THE LOAN ELIGIBILITY AMOUNT FOR ALTERNATIVE ENERGY SYSTEMS FOR SMALL BUSINESSES, INDIVIDUALS, UNITS OF LOCAL GOVERNMENT, UNITS OF THE UNIVERSITY SYSTEM, AND NONPROFIT ENTITIES; ALLOWING NONPROFIT ENTITIES, UNITS OF LOCAL GOVERNMENT, AND UNITS OF THE UNIVERSITY SYSTEM TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; ALLOWING ENERGY CONSERVATION PROJECTS TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH ADDITIONAL RULEMAKING AUTHORITY REGARDING ELIGIBILITY CRITERIA; CLARIFYING ADMINISTRATIVE COSTS FOR LOANS; AMENDING SECTIONS 75-25-101 AND 75-25-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	319
111	(<i>Senate Bill No. 53; Squires</i>) REMOVING THE REQUIREMENT THAT STATE AGENCIES MUST PAY THE RELOCATION EXPENSES OF	

	EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, A CLOSURE, OR A REDUCTION IN FORCE; AMENDING SECTION 2-18-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	321
112	(<i>Senate Bill No. 54; Squires</i>) CLARIFYING THE REIMBURSEMENT RATE FOR PRIVATE MOTOR VEHICLE USE BY STATE OFFICERS AND EMPLOYEES; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	321
113	(<i>Senate Bill No. 56; McGee</i>) REDUCING BY TWO THE NUMBER OF MEMBERS OF THE DESIGN-BUILD CONTRACTING BOARD; CLARIFYING BOARD MEMBERSHIP; AND AMENDING SECTION 60-2-136, MCA	322
114	(<i>Senate Bill No. 67; Cromley</i>) INCREASING THE FEES FOR ISSUANCE OF A MARRIAGE LICENSE AND FILING OF A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION; PROVIDING THAT THE INCREASE IN FEES IS FOR THE COUNTY DISTRICT COURT FUND OR COUNTY GENERAL FUND FOR DISTRICT COURT OPERATIONS; AMENDING SECTIONS 3-2-714, 15-1-121, 25-1-201, 40-1-202, 40-1-311, AND 50-15-301, MCA; AND PROVIDING AN EFFECTIVE DATE	323
115	(<i>Senate Bill No. 69; Cobb</i>) ESTABLISHING THE HONORARY POSITION OF STATE POET LAUREATE; PROVIDING FOR THE NOMINATION, APPOINTMENT, AND TERM OF THE STATE POET LAUREATE; PROVIDING FOR IMPLEMENTATION; AMENDING SECTION 22-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	331
116	(<i>Senate Bill No. 79; Tropila</i>) EXEMPTING ELIGIBLE VETERANS FROM CEMETERY AND VEHICLE REGISTRATION FEES FOR TWO SETS OF SPECIAL VETERAN LICENSE PLATES USED ON TWO VEHICLES; AMENDING SECTION 61-3-460, MCA; AND PROVIDING AN EFFECTIVE DATE	332
117	(<i>Senate Bill No. 83; Roush</i>) CLARIFYING THAT ALTERNATIVE RENEWABLE ENERGY PROJECTS ARE ELIGIBLE FOR RENEWABLE RESOURCE GRANTS AND LOANS; AMENDING SECTION 85-1-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	333
118	(<i>Senate Bill No. 94; Cromley</i>) REVISING PROCEDURES FOR SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT ACTIONS; AND AMENDING SECTIONS 41-3-422, 41-3-428, AND 41-3-429, MCA	334
119	(<i>Senate Bill No. 99; Mangan</i>) GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY NOT ISSUE OR RENEW THE LICENSE OF AN APPLICANT FOR LICENSURE IF THE CRIMINAL HISTORY OF THE EMPLOYEES OF THE APPLICANT DEMONSTRATES ANY CONVICTIONS INVOLVING FRAUD OR FINANCIAL DISHONESTY OR IF THE DEPARTMENT'S FINDINGS SHOW ADVERSE CIVIL JUDGMENTS INVOLVING FRAUDULENT OR DISHONEST FINANCIAL DEALINGS; REDUCING THE PERIOD FOR THE RETENTION OF CERTAIN RECORDS BY A LICENSEE FROM 4 YEARS TO 2 YEARS; AND AMENDING SECTIONS 31-1-705 AND 31-1-714, MCA	339
120	(<i>Senate Bill No. 100; Mangan</i>) REVISING THE MONTANA TITLE LOAN ACT TO PROHIBIT THE DEPARTMENT OF ADMINISTRATION FROM ISSUING OR RENEWING THE LICENSE OF AN APPLICANT IF THE CRIMINAL HISTORY OF THE EMPLOYEES OF AN APPLICANT FOR LICENSURE DEMONSTRATE ANY CONVICTIONS INVOLVING FRAUD OR FINANCIAL DISHONESTY OR IF THE DEPARTMENT'S	

	FINDINGS SHOW ADVERSE CIVIL JUDGMENTS INVOLVING FRAUDULENT OR DISHONEST FINANCIAL DEALINGS; AND AMENDING SECTION 31-1-805, MCA.	341
121	(<i>Senate Bill No. 106; Brueggeman</i>) GENERALLY REVISING AND SIMPLIFYING THE STATEWIDE COST ALLOCATION PLAN FOR STATE CENTRALIZED SERVICES REQUIRED TO MANAGE NONGENERAL FUNDS; AMENDING SECTIONS 17-3-110 AND 17-3-111, MCA; REPEALING SECTION 17-1-510, MCA; AND PROVIDING AN EFFECTIVE DATE.	342
122	(<i>Senate Bill No. 132; Cooney</i>) REPEALING A REQUIREMENT FOR THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE STATE COMPENSATION INSURANCE FUND ON INDEPENDENT CONTRACTOR OR OTHER EMPLOYMENT EXEMPTIONS; REPEALING SECTION 39-51-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	344
123	(<i>Senate Bill No. 141; Laible</i>) ALLOWING A NOTARIAL SEAL TO USE THE WORDS "NOTARY PUBLIC" INSTEAD OF THE WORDS "NOTARIAL SEAL"; AND AMENDING SECTION 1-5-416, MCA	344
124	(<i>Senate Bill No. 169; Gallus</i>) INCREASING PENALTIES FOR VIOLATION OF NATURAL GAS PIPELINE SAFETY PROVISIONS AND REGULATIONS; AND AMENDING SECTION 69-3-207, MCA.	345
125	(<i>Senate Bill No. 454; Gebhardt</i>) REVISING THE DEFINITION OF "INTEREST" WITH RESPECT TO CREDIT TRANSACTIONS; REVISING RESTRICTIONS ON CONSUMER LOANS; CLARIFYING WHAT CONSTITUTES AN ADD-ON BASIS LOAN; AMENDING SECTIONS 31-1-104, 32-5-103, AND 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	346
126	(<i>House Bill No. 203; Roberts</i>) GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; REQUIRING ONE MEMBER OF THE BOARD OF NURSING TO BE AN ADVANCED PRACTICE REGISTERED NURSE AND REQUIRING ONE MEMBER TO BE FROM A RURAL HEALTH CARE FACILITY; EXPANDING MEMBERSHIP FOR THE BOARD OF SANITARIANS, THE BOARD OF PUBLIC ACCOUNTANTS, AND THE BOARD OF ATHLETICS; REVISING LICENSURE REFERENCES TO FEDERALLY EMPLOYED PHYSICIANS; REVISING REFERENCES TO SUPERVISION FOR REGISTERED NURSE-MIDWIVES; REMOVING THE EXEMPTION FROM LICENSURE FOR PHYSICAL THERAPISTS; MAKING LICENSURE REFERENCES UNIFORM; MAKING THE LICENSED PRACTICAL NURSING APPLICATION FEE NONREFUNDABLE; DEPOSITING FINES FOR CERTAIN VIOLATIONS IN THE GENERAL FUND RATHER THAN THE STATE SPECIAL REVENUE FUND; REVISING REFERENCES TO TOPICAL MEDICATION PACKAGING AND LABELING REQUIREMENTS; EXEMPTING THE OPERATOR OF CERTAIN INDUSTRIAL X-RAY EQUIPMENT FROM LICENSING; REVISING REFERENCES TO LICENSE EXEMPTIONS UNDER TITLE 37, CHAPTER 17, INCLUDING DELETION OF THE DEFINITION OF "SOCIAL PSYCHOLOGIST"; REVISING THE LICENSING EXEMPTION FOR OUT-OF-STATE VETERINARIANS PRACTICING IN MONTANA; DELETING THE REFERENCE TO BURIAL-TRANSIT PERMITS; CLARIFYING LICENSURE REQUIREMENTS FOR LICENSED ADDICTION COUNSELORS; REVISING INSURANCE AND QUALIFICATION REQUIREMENTS UNDER TITLE 37, CHAPTER 60; SPECIFYING THE COMPANY OR ORGANIZATION REQUIRED TO APPOINT A QUALIFYING AGENT AND RESIDENT MANAGER;	

REMOVING THE REQUIREMENT TO NOTIFY LAW ENFORCEMENT AND THE COUNTY ATTORNEY OF APPLICATIONS FOR A PRIVATE INVESTIGATOR LICENSE; AMENDING SECTIONS 2-15-1731, 2-15-1734, 2-15-1751, 2-15-1756, 2-15-1772, 37-3-103, 37-3-201, 37-3-205, 37-3-301, 37-3-303, 37-3-304, 37-3-306, 37-3-307, 37-3-309, 37-3-315, 37-3-323, 37-3-343, 37-3-344, 37-3-345, 37-3-346, 37-3-347, 37-3-348, 37-3-349, 37-4-103, 37-4-327, 37-4-408, 37-7-401, 37-8-101, 37-8-418, 37-10-202, 37-10-301, 37-10-302, 37-10-304, 37-10-306, 37-10-313, 37-11-106, 37-14-301, 37-17-104, 37-18-104, 37-19-101, 37-35-202, 37-60-202, 37-60-302, 37-60-303, AND 37-60-304, MCA; REPEALING SECTION 37-3-302, MCA; AND PROVIDING AN EFFECTIVE DATE. .

349

- 127 (*House Bill No. 370; Gallik*) REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REVISING PROCEDURES FOR CONTESTED CASE HEARINGS; ELIMINATING CERTAIN PERMIT APPLICATION FEE REQUIREMENTS; REVISING THE BOND RELEASE PROCEDURES; CLARIFYING THE PROHIBITION ON MINING CERTAIN LANDS; CLARIFYING THE HEARING REQUIREMENTS ON THE DEPARTMENT'S PERMIT DECISIONS; PROVIDING CRITERIA FOR AN ADMINISTRATIVELY COMPLETE BOND RELEASE APPLICATION; REQUIRING PUBLIC NOTICE FOR A BOND RELEASE; REVISING THE OBJECTION PROCESS FOR A BOND RELEASE; CLARIFYING PROCEDURES FOR MODIFICATIONS OF BOND RELEASE APPLICATIONS; CLARIFYING THE VEGETATION RECLAMATION REQUIREMENTS; ALLOWING A PERMITTEE TO REQUEST A CONTESTED CASE HEARING ON A PERMIT SUSPENSION OR REVOCATION; AMENDING SECTIONS 82-4-206, 82-4-223, 82-4-225, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-235, AND 82-4-251, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

377

- 128 (*House Bill No. 452; Windy Boy*) IMPLEMENTING CERTAIN RECOMMENDATIONS TO REDESIGN THE MEDICAID PROGRAM SPECIFICALLY INVOLVING INDIAN TRIBES, TRIBAL HEALTH CARE FACILITIES, AND INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REQUEST A WAIVER OF FEDERAL MEDICAID LAW SO THAT ANY REDUCTIONS IN MEDICAID ELIGIBILITY DO NOT SHIFT COSTS TO TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT TO WORK WITH TRIBAL GOVERNMENTS TO EXPLORE POSSIBILITIES FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM TO LEVERAGE FEDERAL FINANCIAL PARTICIPATION; REQUIRING THE DEPARTMENT TO EXPLORE OPTIONS OR WAIVERS OF MEDICAID LAW FOR THE PURCHASE OF PRESCRIPTION DRUGS ON A RESERVATION AT TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEVELOPMENT OF A POLICY AND PROCESS TO REVIEW INDIAN ELIGIBILITY ISSUES; REQUIRING THE DEPARTMENT TO WORK WITH INDIAN TRIBES TO IMPROVE THE PROVISION OF MEDICAID SERVICES TO INDIANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

398

- 129 (*House Bill No. 463; Facey*) INCREASING THE CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; INCREASING THE MAXIMUM ALLOWABLE CREDIT; EXTENDING THE DURATION OF THE CREDIT; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA, AND SECTION 8, CHAPTER 516, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE

400

130	(<i>Senate Bill No. 24; Cromley</i>) GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 59TH LEGISLATURE; AMENDING SECTIONS 1-1-516, 2-2-106, 2-15-1821, 2-15-1822, 2-18-1204, 3-10-301, 5-7-112, 7-1-2111, 7-2-2422, 7-2-2424, 7-3-173, 7-35-2121, 13-13-211, 15-1-121, 15-1-122, 15-24-3005, 15-30-111, 15-31-115, 15-61-102, 15-65-121, 15-70-301, 16-1-101, 17-2-131, 17-5-507, 17-6-407, 20-3-351, 20-9-141, 20-9-501, 20-10-144, 20-10-146, 20-15-221, 20-20-303, 20-25-308, 23-2-502, 23-2-511, 23-2-514, 23-2-515, 23-2-521, 23-2-614, 27-1-306, 30-14-222, 30-14-223, 30-14-901, 30-14-1407, 33-22-140, 37-10-304, 39-11-201, 39-11-204, 39-71-1011, 39-71-1014, 39-71-2316, 40-5-906, 40-6-405, 41-3-302, 41-3-437, 41-3-445, 44-1-1102, 46-14-221, 46-14-222, 46-19-202, 50-20-101, 50-60-203, 52-2-304, 53-6-703, 53-7-109, 61-3-403, 61-3-522, 61-3-722, 61-4-223, 61-4-515, 61-4-520, 61-8-906, 61-8-913, 61-10-227, 61-10-233, 71-3-534, 72-1-103, 82-15-103, AND 85-7-304, MCA; AND REPEALING SECTIONS 15-7-104, 15-32-108, 20-6-212, AND 85-7-2141, MCA	402
131	(<i>Senate Bill No. 51; Hansen</i>) AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO REVOKE A LICENSE FOR FAILURE TO ASSESS, REPORT, OR PAY ASSESSMENTS; REQUIRING COMMODITY DEALERS TO RETAIN AND MAINTAIN RECORDS FOR 5 YEARS; AMENDING SECTIONS 80-4-421 AND 80-4-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	476
132	(<i>Senate Bill No. 57; Laible</i>) PROHIBITING A STUDENT WHO IS ATTENDING A JOB CORPS PROGRAM FROM CLAIMING THE JOB CORPS FACILITY AS THE STUDENT'S RESIDENCE FOR EDUCATIONAL PURPOSES; AMENDING SECTIONS 20-5-322, 20-7-420, 20-9-707, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE	478
133	(<i>Senate Bill No. 64; Brueggeman</i>) REVISING LAWS GOVERNING CONTRACTOR REGISTRATION; REVISING REGISTRATION AND FEE PROVISIONS FOR CONSTRUCTION CONTRACTORS; SPECIFYING DISPOSITION OF CONSTRUCTION CONTRACTOR AND INDEPENDENT CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-9-201, 39-9-206, 39-71-201, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	480
134	(<i>Senate Bill No. 84; Squires</i>) PROVIDING A PROCEDURE FOR FORFEITURE OF SEIZED EVIDENCE IN GAMBLING CASES; PROVIDING FOR PRIVATE VIDEO GAMBLING MACHINE TESTING FACILITIES TO BE LICENSED AS MANUFACTURERS; PROVIDING FOR PUBLIC DISPLAY OF ANTIQUE SLOT MACHINES; PROVIDING REMEDIES TO PURSUE VIOLATIONS BY A LICENSEE FOLLOWING THE EXPIRATION OF A LICENSE OR A PERMIT; PROVIDING FOR MULTIPLE WINNING PATTERNS FOR THE GAME OF BINGO; PROVIDING A DEFINITION OF A BONUS GAME TO BE PLAYED ON A VIDEO GAMBLING MACHINE; INCREASING THE TYPES OF POKER GAMES THAT MAY BE PLAYED ON A POKER MACHINE; PROVIDING RULEMAKING AUTHORITY FOR THE DISPLAY OF IMAGES AND SCREENS FOR VIDEO GAMBLING MACHINES; AMENDING SECTIONS 23-5-112, 23-5-113, 23-5-123, 23-5-152, 23-5-153, 23-5-412, 23-5-602, 23-5-621, AND 23-5-625, MCA; AND PROVIDING AN EFFECTIVE DATE	488
135	(<i>Senate Bill No. 98; Tropila</i>) CREATING THE MONTANA LAND INFORMATION ACT; STATING THE PURPOSES OF THE MONTANA LAND INFORMATION ACT; DEFINING CERTAIN TERMS;	

ESTABLISHING CERTAIN DUTIES FOR THE DEPARTMENT OF ADMINISTRATION REGARDING LAND INFORMATION; CREATING THE LAND INFORMATION ADVISORY COUNCIL AND DESCRIBING APPOINTMENTS, TERMS, VACANCIES, AND COMPENSATION OF COUNCIL MEMBERS; CREATING THE MONTANA LAND INFORMATION ACCOUNT AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNT; REQUIRING EACH COUNTY GOVERNING BODY TO CREATE A COUNTY LAND INFORMATION ACCOUNT AND DESCRIBING THE PURPOSES AND ALLOWABLE USES OF THE ACCOUNT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO ADMINISTER THE MONTANA LAND INFORMATION ACT; REVISING CERTAIN FEES CHARGED FOR RECORDING CERTAIN DOCUMENTS AND REVISING THE DISTRIBUTION OF THE FEES COLLECTED; AMENDING SECTIONS 7-4-2632 AND 7-4-2637, MCA; AND PROVIDING AN EFFECTIVE DATE

500

- 136 (*Senate Bill No. 117; Cocchiarella*) REVISING MORTGAGE BROKER LAWS; MODIFYING THE DEFINITION OF "MORTGAGE BROKER" TO INCLUDE A PERSON WHO LOANS MONEY THAT IS NOT SECURED BY PROPERTY PURCHASED WITH THE LOAN PROCEEDS; INCREASING FROM 5 PERCENT TO 10 PERCENT THE OWNERSHIP INTEREST IN A MORTGAGE BROKER ENTITY A PERSON MUST HAVE BEFORE THAT OWNERSHIP INTEREST MUST BE REPORTED TO THE DEPARTMENT OF ADMINISTRATION; REVISING INFORMATION INCLUDED IN ADVERTISING; AUTHORIZING THE DEPARTMENT TO SHARE INFORMATION WITH OTHER STATE REGULATORY AGENCIES AND THE MORTGAGE ASSET RESEARCH INSTITUTE, INC., AND OTHER SIMILAR ORGANIZATIONS; AND AMENDING SECTIONS 32-9-103, 32-9-115, 32-9-121, AND 32-9-130, MCA.

506

- 137 (*Senate Bill No. 166; Black*) REVISING METHAMPHETAMINE ENFORCEMENT LAWS; MAKING THEFT OF ANY AMOUNT OF ANHYDROUS AMMONIA FOR THE PURPOSE OF MANUFACTURING DANGEROUS DRUGS A FELONY; PROVIDING THAT POSSESSION OF ANHYDROUS AMMONIA WITH INTENT TO MANUFACTURE DANGEROUS DRUGS IS CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AMENDING SECTIONS 45-6-301, 45-9-107, AND 45-9-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

510

- 138 (*Senate Bill No. 170; Mangan*) PROVIDING FLEXIBILITY TO SCHOOL DISTRICTS IN SETTING THEIR SCHOOL CALENDARS BY ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT CONDUCT AT LEAST 180 SCHOOL DAYS DURING EACH SCHOOL FISCAL YEAR; DEFINING "MINIMUM AGGREGATE HOURS"; REQUIRING A SCHOOL DISTRICT TO CONDUCT SCHOOL FOR A MINIMUM NUMBER OF AGGREGATE HOURS EACH SCHOOL YEAR; REQUIRING SCHOOL DISTRICT TRUSTEES TO SET THE LENGTH OF THE SCHOOL TERM, SCHOOL DAY, AND SCHOOL WEEK; MAKING THE REVISIONS NECESSARY TO REFLECT THE ELIMINATION OF THE REQUIREMENT FOR 180 SCHOOL DAYS; AMENDING SECTIONS 2-2-302, 20-1-101, 20-1-301, 20-1-302, 20-1-304, 20-2-115, 20-2-121, 20-3-324, 20-5-109, 20-6-209, 20-9-311, 20-9-801, 20-9-802, 20-9-805, AND 20-9-806, MCA; AND PROVIDING AN EFFECTIVE DATE.

513

- 139 (*Senate Bill No. 171; Gallus*) AUTHORIZING THE PRESIDENTS OF THE UNITS OF THE UNIVERSITY SYSTEM TO OFFER MULTIYEAR CONTRACTS TO ATHLETIC COACHES; AND AMENDING SECTIONS 20-25-305 AND 28-2-722, MCA

524

140	(<i>Senate Bill No. 188; Cocchiarella</i>) DISTINGUISHING CLAIMS ADJUSTERS UNDER THE MONTANA INSURANCE CODE FROM CLAIMS EXAMINERS UNDER THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; EXEMPTING CLAIMS EXAMINERS FROM THE LICENSURE REQUIREMENTS OF TITLE 33; DEFINING "CLAIMS EXAMINER" FOR PURPOSES OF THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 33-17-102, 39-71-107, 39-71-116, 39-71-225, 39-71-307, AND 39-72-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	524
141	(<i>Senate Bill No. 189; Cocchiarella</i>) CLARIFYING THAT THE IMPAIRMENT MEDICAL EVALUATION PROCEDURES FOR WORKERS' COMPENSATION APPLY TO IMPAIRMENT RATING DISPUTES; AMENDING SECTIONS 39-71-605 AND 39-71-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	535
142	(<i>Senate Bill No. 235; Mangan</i>) MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION SUBSTATIONS, SWITCH YARDS, VOLTAGE SUPPORT, OR OTHER CONTROL EQUIPMENT AND UPGRADING TRANSMISSION LINES WITHIN AN EXISTING RIGHT-OF-WAY; DEFINING THE TERM "UPGRADE"; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	536
143	(<i>Senate Bill No. 243; Cocchiarella</i>) PROVIDING THAT A BEER WHOLESALER MAY HAVE MORE THAN ONE SUBWAREHOUSE; PROVIDING THAT A BEER WHOLESALER THAT IS ALSO A LICENSED TABLE WINE DISTRIBUTOR MAY STORE WINE IN ANY WAREHOUSE OR SUBWAREHOUSE OF THE BEER WHOLESALER; AMENDING SECTION 16-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	539
144	(<i>Senate Bill No. 356; Essmann</i>) ELIMINATING THE PUBLIC SERVICE COMMISSION'S 90-DAY PERIOD FOR WITHHOLDING RECORDS AND REPORTS FROM THE PUBLIC; EXPANDING THE SCOPE OF PROTECTIVE ORDERS TO INCLUDE INFORMATION THAT MUST BE PROTECTED UNDER LAW; AND AMENDING SECTION 69-3-105, MCA	540
145	(<i>Senate Bill No. 16; Tropila</i>) PROHIBITING THE USE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS FEATURING A CANDIDATE FOR OFFICE; AND AMENDING SECTION 2-2-121, MCA	540
146	(<i>Senate Bill No. 187; Shockley</i>) PROVIDING THAT UNDER THE TERMS OF THE JOINT AGREEMENT BETWEEN THE STATE AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES, JUDGMENTS FOR FISH AND GAME VIOLATIONS IN CONFEDERATED SALISH AND KOOTENAI TRIBAL COURTS ARE ENTITLED TO FULL FAITH AND CREDIT IN MONTANA COURTS; AMENDING SECTION 87-1-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	542
147	(<i>House Bill No. 16; Ripley</i>) INCREASING THE PER STUDENT DISTRIBUTION LIMIT FOR RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA TO \$3,024; LIMITING THE FINANCIAL ASSISTANCE TO NONBENEFICIARY STUDENTS ENROLLED IN COURSES FOR WHICH CREDIT IS TRANSFERABLE TO ANOTHER MONTANA COLLEGE OR UNIVERSITY, EXCEPT FOR COURSES DIRECTLY RELATED TO A VOCATIONAL DEGREE PROGRAM OR TO A 2- TO 4-YEAR DEGREE PROGRAM OR CERTIFICATE PROGRAM; ELIMINATING THE REQUIREMENT TO SUBTRACT THE AMOUNT	

	GIVEN IN INDIAN FEE WAIVERS PRIOR TO DISTRIBUTION OF MONEY FOR NONBENEFICIARY WAIVERS; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN EFFECTIVE DATE	543
148	(<i>House Bill No. 17; Buzzas</i>) REQUIRING THAT ALL MONEY RECEIVED BY THE MONTANA HISTORICAL SOCIETY THROUGH DONATION, GIFT, BEQUEST, OR LEGACY BE USED FOR THE GENERAL OPERATION OF THE SOCIETY UNLESS OTHERWISE PROVIDED BY THE DONOR; AMENDING SECTIONS 22-3-107 AND 22-3-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	545
149	(<i>House Bill No. 32; Cohenour</i>) ELIMINATING CONFLICTS IN VITAL RECORDS STATUTES; ELIMINATING THE REQUIREMENT THAT LOCAL REGISTRARS RETAIN CERTIFICATE COPIES IF CERTIFICATES ARE FILED ELECTRONICALLY; ALLOWING A NEW BIRTH CERTIFICATE TO BE ISSUED FOR A FOREIGN PERSON ADOPTED IN MONTANA REGARDLESS OF CITIZENSHIP; AMENDING SECTIONS 50-15-109, 50-15-223, AND 50-15-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	547
150	(<i>House Bill No. 34; McNutt</i>) ALLOWING NONRESIDENTS WHO HOLD CERTAIN HUNTING LICENSES TO PURCHASE A NONRESIDENT WILD TURKEY TAG AT A DISCOUNTED FEE; AMENDING SECTION 87-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	549
151	(<i>House Bill No. 44; Dickenson</i>) EXEMPTING REVENUE RECEIVED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FOR THE ADMISSION OF NONRESIDENT CHILDREN FROM THE REQUIREMENT TO SPEND NONGENERAL FUND MONEY BEFORE GENERAL FUND MONEY; AMENDING SECTIONS 17-2-108 AND 20-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	550
152	(<i>House Bill No. 88; Caferro</i>) REPEALING THE REQUIREMENT FOR A SIMPLIFIED APPLICATION FORM FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROGRAMS THAT PROVIDE CHILDREN'S HEALTH CARE; REPEALING SECTION 53-4-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	552
153	(<i>House Bill No. 100; Maedje</i>) REQUIRING PERSONS AT SEARCHED PREMISES TO BE RESTRAINED IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH THE SAFETY OF THE PERSON OR PERSONS PERFORMING THE SEARCH; AND AMENDING SECTION 46-5-228, MCA	552
154	(<i>House Bill No. 103; Driscoll</i>) PROVIDING THAT A CITY ATTORNEY SHALL, WITHIN 10 DAYS, SERVE UPON THE ATTORNEY GENERAL A COPY OF ANY NOTICE OF APPEAL THAT THE CITY ATTORNEY FILES OR RECEIVES IN A CRIMINAL PROCEEDING; AND AMENDING SECTION 7-4-4604, MCA.	553
155	(<i>House Bill No. 113; Jent</i>) REQUIRING ALL FELONS TO SUBMIT A DNA SAMPLE; AUTHORIZING THE USE OF PREVIOUSLY COLLECTED SAMPLES; AMENDING SECTION 44-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	553
156	(<i>House Bill No. 162; Henry</i>) REQUIRING A SCHOOL DISTRICT TO RETAIN CERTIFIED COPIES OF IMMUNIZATION RECORDS OF CHILDREN WHO HAVE TRANSFERRED TO ANOTHER SCHOOL DISTRICT; AND AMENDING SECTION 20-5-403, MCA	554
157	(<i>House Bill No. 174; Witt</i>) PROVIDING THAT A PRIVATE FISH POND LICENSE IS VALID FOR 10 YEARS; PROVIDING FOR A \$10 APPLICATION AND RENEWAL FEE; PROVIDING FOR THE	

	TRANSFER OF A PRIVATE FISH POND LICENSE IN CERTAIN INSTANCES; AMENDING SECTION 87-4-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	555
158	(<i>House Bill No. 191; Becker</i>) CLARIFYING THAT SPOUSAL PRIVILEGE APPLIES ONLY TO COMMUNICATIONS MADE BETWEEN SPOUSES DURING THE MARRIAGE; CLARIFYING EXCEPTIONS; AMENDING SECTION 26-1-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	556
159	(<i>House Bill No. 196; Jayne</i>) DELINEATING THE FIDUCIARY RESPONSIBILITY OF AN AGENT TO A PRINCIPAL IN THE STATUTORY FORM POWER OF ATTORNEY; ALLOWING FOR AN AGENT'S SIGNATURE; AND AMENDING SECTION 72-31-201, MCA	557
160	(<i>House Bill No. 201; Ripley</i>) EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES	560
161	(<i>House Bill No. 206; Noonan</i>) RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES ARE UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	561
162	(<i>House Bill No. 212; Sesso</i>) AUTHORIZING CERTAIN LOCAL GOVERNMENTS TO ENTER INTO ENERGY PERFORMANCE CONTRACTS; PROVIDING PROCEDURES AND CRITERIA FOR SOLICITING AND AWARDED ENERGY PERFORMANCE CONTRACTS; SETTING THE TERM OF ENERGY PERFORMANCE CONTRACTS; REQUIRING MONITORING AND REPORTING OF CONSERVATION MEASURES; PROVIDING THAT LOCAL GOVERNMENT STATUTORY PROCUREMENT REQUIREMENTS DO NOT APPLY TO THE PROCUREMENT OF AN ENERGY PERFORMANCE CONTRACT; PROVIDING THAT ENERGY PERFORMANCE CONTRACTS ARE NOT A GENERAL OBLIGATION OF A LOCAL GOVERNMENT UNIT; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO QUALIFY ENERGY PERFORMANCE CONTRACTORS AND PROVIDE ASSISTANCE TO LOCAL GOVERNMENTS; AMENDING SECTIONS 20-9-204 AND 20-15-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	567
163	(<i>House Bill No. 223; Jent</i>) ELIMINATING THE AUTHORITY FOR AND PROVISIONS GOVERNING THE OPERATION OF A FOREIGN CAPITAL DEPOSITORY; AMENDING SECTIONS 15-1-501, 15-1-121, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 31-1-704, 31-1-802, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND REPEALING SECTIONS 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808,	

MONTANA SESSION LAWS 2005

xxiv

	25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, AND 70-9-701, MCA	573
164	(<i>House Bill No. 225; Maedje</i>) CLARIFYING THE LAWFUL METHOD OF HUNTING BY A LANDOWNER AND A LANDOWNER'S GUESTS AND LESSEES ON THE LANDOWNER'S PRIVATE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	588
165	(<i>House Bill No. 234; Lange</i>) PROVIDING THAT A MILITARY DISCHARGE CERTIFICATE INADVERTENTLY FILED WITH A COUNTY CLERK MUST BE RETURNED UPON REQUEST; CLARIFYING THAT IT IS NOT THE CLERK'S DUTY TO FILE A DISCHARGE CERTIFICATE; PROVIDING DEFINITIONS; AMENDING SECTION 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	589
166	(<i>House Bill No. 257; Branae</i>) REMOVING THE DURATIONAL LIMIT OF PERSONAL SERVICES CONTRACTS; AND REPEALING SECTION 28-2-722, MCA	590
167	(<i>House Bill No. 262; Lange</i>) PROVIDING FOR MULTIPLE MUNICIPAL COURT SESSIONS AND DEPARTMENTS AND FOR A CHIEF MUNICIPAL COURT JUDGE WHEN THERE IS MORE THAN ONE JUDGE; PROVIDING FOR THE DUTIES OF A CHIEF MUNICIPAL COURT JUDGE; PROVIDING FOR A PART-TIME ASSISTANT JUDGE FOR EACH MUNICIPAL COURT JUDGE; REVISING THE QUALIFICATIONS OF A REPLACEMENT FOR A DISQUALIFIED OR SICK JUDGE; AND AMENDING SECTIONS 3-6-106, 3-6-201, AND 3-6-204, MCA	590
168	(<i>House Bill No. 269; Clark</i>) CLARIFYING THAT A STATE OR COUNTY HIGHWAY, ROAD, OR RIGHT-OF-WAY THAT PROVIDES EXISTING LEGAL ACCESS TO PUBLIC LAND OR WATERS, INCLUDING ACCESS FOR PUBLIC RECREATIONAL USE, MAY BE ABANDONED ONLY IF ANOTHER PUBLIC HIGHWAY, ROAD, OR RIGHT-OF-WAY PROVIDES SUBSTANTIALLY THE SAME ACCESS; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	591
169	(<i>House Bill No. 270; Lindeen</i>) REVISING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING PROGRAM; TRANSFERRING ADMINISTRATION OF THE PROGRAM FROM THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF COMMERCE; REVISING THE FUNDING MECHANISM; AMENDING SECTIONS 39-11-103, 39-11-201, AND 39-11-202, MCA, AND SECTION 10, CHAPTER 567, LAWS OF 2003; REPEALING SECTIONS 39-11-203 AND 39-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	592
170	(<i>House Bill No. 271; Lindeen</i>) APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR WORKFORCE TRAINING GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	598
171	(<i>House Bill No. 275; Jacobson</i>) REQUIRING THAT THE VALUE OF A VEHICLE BE DETERMINED BY THE APPLICANT FOR A	

	CERTIFICATE OF TITLE WHEN THE APPLICANT PROVIDES A BOND IN THE AMOUNT OF THE VALUE OF THE VEHICLE; AND AMENDING SECTION 61-3-208, MCA	598
172	(<i>House Bill No. 281; Wagman</i>) CLARIFYING THAT A GUIDE OR PROFESSIONAL GUIDE MAY QUALIFY FOR LICENSURE ACCORDING TO STANDARDS ADOPTED BY THE BOARD OF OUTFITTERS IN LIEU OF AN ENDORSEMENT AND RECOMMENDATION BY A LICENSED OUTFITTER; AND AMENDING SECTION 37-47-303, MCA	599
173	(<i>House Bill No. 306; Gallik</i>) REQUIRING THE DEPARTMENT OF COMMERCE TO PROVIDE AN ELECTRONIC DIRECTORY OF MONTANA PRODUCTS; PROVIDING RULEMAKING AND CONTRACTING AUTHORITY; ALLOWING AN EXEMPTION OF PUBLIC EMPLOYEE CONDUCT STANDARDS; AND AMENDING SECTION 2-2-121, MCA	600
174	(<i>House Bill No. 318; McKenney</i>) AMENDING THE HEALTH INSURANCE LIMITED COVERAGE DEMONSTRATION PROJECT LAW TO ALLOW ISSUANCE OF LIMITED COVERAGE HEALTH INSURANCE PLANS TO ADDITIONAL UNINSURED MONTANA RESIDENTS AND TO ALLOW PLANS TO EXCLUDE COVERAGE FOR CERTAIN DIABETIC BENEFITS AND FOR INBORN ERRORS OF METABOLISM; AMENDING SECTION 33-22-262, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . .	603
175	(<i>House Bill No. 321; Facey</i>) ALLOWING A COUNTY PARK DISTRICT TO PURCHASE REAL PROPERTY FOR USE AS PARK AND RECREATION LAND WITH CONCURRENCE OF THE COUNTY GOVERNING BODY OR BODIES; AND AMENDING SECTIONS 7-16-2401, 7-16-2423, AND 7-16-2433, MCA	604
176	(<i>House Bill No. 371; Lambert</i>) PROVIDING THAT MONEY FROM ANY SOURCE MAY BE PLACED IN THE COUNTY PREDATORY ANIMAL CONTROL FUNDS TO BE USED FOR COUNTY PREDATORY ANIMAL CONTROL; AMENDING SECTIONS 81-7-303 AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	606
177	(<i>House Bill No. 409; Golie</i>) REVISING THE WORKFORCE DRUG AND ALCOHOL TESTING PROGRAM; REVISING THE DEFINITION OF SAMPLE; REVISING THE CRITERIA FOR A QUALIFIED TESTING PROGRAM; AND AMENDING SECTIONS 39-2-206, 39-2-207, AND 39-2-209, MCA	607
178	(<i>House Bill No. 420; Wagman</i>) PROVIDING THAT IN A CHILD ABUSE AND NEGLECT PROCEEDING, IF A MEMBER OF THE CHILD'S EXTENDED FAMILY HAS REQUESTED THAT TEMPORARY OR PERMANENT CUSTODY BE AWARDED TO THAT FAMILY MEMBER AND THE REQUEST IS DENIED, THE FAMILY MEMBER IS ENTITLED TO A WRITTEN STATEMENT OF THE REASONS FOR THE DENIAL AS ALLOWED BY CONFIDENTIALITY LAWS; AND AMENDING SECTIONS 41-3-438, 41-3-439, AND 41-3-445, MCA	610
179	(<i>House Bill No. 427; Grinde</i>) INCREASING THE AMOUNT DEDUCTED FROM A POLICE OFFICER'S MONTHLY COMPENSATION THAT IS USED TO PAY PREMIUMS ON GROUP LIFE INSURANCE AND FOR REPRESENTATION BY THE POLICE PROTECTIVE ASSOCIATION; AND AMENDING SECTION 7-32-4122, MCA	615
180	(<i>House Bill No. 478; Warden</i>) PROVIDING THAT INDIVIDUALS REQUIRED TO REGISTER IN COMPLIANCE WITH THE FEDERAL MILITARY SELECTIVE SERVICE ACT MUST BE PROVIDED AN	

	OPPORTUNITY TO FULFILL REGISTRATION REQUIREMENTS IN CONJUNCTION WITH AN APPLICATION FOR A DRIVER'S LICENSE, COMMERCIAL DRIVER'S LICENSE, INSTRUCTION PERMIT, OR STATE IDENTIFICATION CARD; REQUIRING THE DEPARTMENT OF JUSTICE TO SUBMIT ANY SUPPLIED REGISTRATION INFORMATION TO THE SELECTIVE SERVICE SYSTEM; AND AMENDING SECTION 61-5-107, MCA.	615
181	(<i>House Bill No. 481; Lindeen</i>) ESTABLISHING A MAIN STREET PROGRAM IN THE DEPARTMENT OF COMMERCE TO BE DEVELOPED IN CONJUNCTION WITH THE NATIONAL TRUST FOR HISTORIC PRESERVATION; AND PROVIDING AN EFFECTIVE DATE	617
182	(<i>House Bill No. 507; Jones</i>) ALLOWING ADDITIONAL COMPENSATION FOR COUNTY CLERKS AND RECORDERS WHO ARE ALSO ELECTION ADMINISTRATORS; AND AMENDING SECTION 7-4-2503, MCA	618
183	(<i>House Bill No. 520; Furey</i>) PROVIDING THAT INFORMATION OR STATEMENTS PROVIDED BY A PERSON UNDER 21 YEARS OF AGE TO A HEALTH CARE PROVIDER OR LAW ENFORCEMENT PERSONNEL REGARDING AN ALLEGED OFFENSE AGAINST THAT PERSON UNDER THE CRIMINAL LAWS RELATING TO SEXUAL OFFENSES AGAINST A PERSON MAY NOT BE USED IN A PROSECUTION OF THAT PERSON FOR THE OFFENSE OF BEING A MINOR IN POSSESSION OF AN INTOXICATING SUBSTANCE; PROVIDING THAT THE SAME PROTECTION EXTENDS TO A PERSON WHO HELPS THE VICTIM OBTAIN MEDICAL OR OTHER ASSISTANCE OR REPORT THE OFFENSE TO LAW ENFORCEMENT PERSONNEL; AMENDING SECTION 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	620
184	(<i>House Bill No. 555; Caferro</i>) CREATING THE MONTANA PARENTS AS SCHOLARS PROGRAM; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE A PROGRAM WITH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES OR MAINTENANCE OF EFFORT FUNDS TO FUND PUBLIC ASSISTANCE TO RECIPIENTS IN APPROVED EDUCATIONAL PROGRAMS; AMENDING SECTIONS 53-4-201 AND 53-4-212, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	623
185	(<i>House Bill No. 556; Noonan</i>) CLARIFYING THE MENTAL STATE RELATED TO ONE TYPE OF MEDICAID FRAUD; CLARIFYING THAT A FALSE OR MISLEADING STATEMENT IS NEEDED FOR THAT TYPE OF MEDICAID FRAUD; REMOVING A PROVISION ALLOWING A CONVICTION FOR ATTEMPTING TO OBTAIN A SERVICE OR ITEM THAT THE PERSON IS NOT ENTITLED TO UNDER A REGULATION OR POLICY NOT ADOPTED AS AN ADMINISTRATIVE RULE UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 45-6-313, MCA.	627
186	(<i>House Bill No. 559; Lake</i>) ALLOWING AN IRREVOCABLE LETTER OF CREDIT AS SECURITY FOR A PUBLIC CONSTRUCTION CONTRACT; AND AMENDING SECTION 18-2-201, MCA.	628
187	(<i>House Bill No. 567; Windham</i>) EXPANDING UNEMPLOYMENT BENEFITS TO INCLUDE AN INDIVIDUAL WHO LEAVES WORK DUE TO BEING A VICTIM OF A SEXUAL ASSAULT OR STALKING; AND AMENDING SECTION 39-51-2111, MCA	630
188	(<i>House Bill No. 581; Gutsche</i>) REVISING AIR QUALITY LAWS; MODIFYING PUBLIC COMMENT PERIODS FOR CERTAIN AIR QUALITY PERMITS; CLARIFYING THE FILING DEADLINE FOR CERTAIN AFFIDAVITS; PROVIDING THE BOARD OF	

	ENVIRONMENTAL REVIEW WITH RULEMAKING AUTHORITY TO AUTHORIZE AND EXTEND PUBLIC COMMENT PERIODS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE	631
189	(<i>House Bill No. 607; Olson</i>) REMOVING REQUIREMENTS FOR COUNTY TREASURERS TO NOTE TAX RECEIPTS BY CERTAIN DEADLINES AND TO DEMAND PAYMENT OF ROAD TAXES; CHANGING REPORTING DEADLINES FOR COUNTY TREASURERS TO COMPORT WITH THE FISCAL YEAR; AMENDING SECTIONS 15-16-301, 15-24-210, AND 15-24-302, MCA; REPEALING SECTIONS 15-16-115 AND 15-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	638
190	(<i>House Bill No. 624; Villa</i>) ALLOWING A SCHOOL DISTRICT TO ADOPT FOR FISCAL YEARS 2006 AND 2007 THE GREATER OF ITS MAXIMUM GENERAL FUND BUDGET OR THE HIGHEST ACTUAL BUDGET ADOPTED BETWEEN FISCAL YEAR 2001 AND FISCAL YEAR 2005; AMENDING SECTION 20-9-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.	639
191	(<i>House Bill No. 631; Stahl</i>) REVISING THE CONDITIONS PRECEDENT TO THE SALE OF SURPLUS LINES INSURANCE TO PROVIDE THAT A POLICY MAY NOT BE PLACED WITH AN UNAUTHORIZED INSURER UNLESS THE PREMIUM RATE QUOTED BY THE AUTHORIZED INSURER IS AT LEAST 10 PERCENT HIGHER AND AT LEAST \$1,500 GREATER THAN THE PREMIUM RATE QUOTED BY THE UNAUTHORIZED INSURER; REQUIRING THE UNAUTHORIZED INSURER TO BE A-RATED OR BETTER; REQUIRING INFORMATION DISCLOSURE; AMENDING SECTIONS 2-9-211 AND 33-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE.	641
192	(<i>House Bill No. 636; Stahl</i>) INCREASING TO \$50,000 THE THRESHOLD AT WHICH A MUNICIPALITY SHALL REQUIRE BIDS FOR THE PURCHASE OF ANY AUTOMOBILE, TRUCK, OTHER VEHICLE, ROAD MACHINERY, OTHER MACHINERY, APPARATUS, APPLIANCES, EQUIPMENT, OR MATERIALS OR SUPPLIES OR FOR CONSTRUCTION, REPAIR, OR MAINTENANCE; AND AMENDING SECTIONS 7-5-4302 AND 7-5-4310, MCA	642
193	(<i>House Bill No. 283; Jopek</i>) REVISING FUNDING FOR CITY AND TOWN FIREFIGHTER RELIEF ASSOCIATION DISABILITY AND PENSION FUNDS; AMENDING SECTIONS 19-18-501, 19-18-503, AND 19-18-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	643
194	(<i>House Bill No. 638; Arntzen</i>) REVISING BARBER AND COSMETOLOGY LAWS; CLARIFYING CONDITIONS FOR A TEMPORARY SHOP OR SALON OPERATING PERMIT; AMENDING SECTIONS 37-31-302 AND 37-31-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	644
195	(<i>House Bill No. 653; Becker</i>) PROVIDING A TIME LIMITATION FOR FILING CERTAIN CLAIMS WITH THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTION 33-10-105, MCA; AND PROVIDING AN APPLICABILITY DATE	646
196	(<i>House Bill No. 660; Olson</i>) REQUIRING A MINIMUM OF A 30-HOUR NOTIFICATION BY A CLERK OF THE SCHOOL DISTRICT TO COUNTY TREASURERS FOR CASH DEMANDS TO MEET WARRANTS IN EXCESS OF \$50,000; REQUIRING THE ASSESSMENT OF A FEE FOR SCHOOL DISTRICTS FAILING TO MEET THE NOTIFICATION DEADLINES; AND AMENDING SECTIONS 20-3-325 AND 20-9-212, MCA.	647

197	(<i>House Bill No. 702; Malcolm</i>) PROVIDING THAT AN OUTFITTER'S LICENSE MAY NOT BE TRANSFERRED; EXPANDING BEYOND FAMILY MEMBERS THOSE WHO MAY CONTINUE THE BUSINESS OF A DECEASED OUTFITTER; CLARIFYING THE ONE-LICENSE LIMIT FOR OUTFITTERS; AND AMENDING SECTIONS 37-47-310 AND 37-47-311, MCA	650
198	(<i>House Bill No. 743; Harris</i>) PROVIDING A LEGISLATIVE FINDING THAT IT IS WITHIN A LOCAL GOVERNMENT'S AUTHORITY TO ENTER INTO CERTAIN CONTRACTS; AND REPEALING SECTION 7-32-4139, MCA	650
199	(<i>House Bill No. 709; Raser</i>) REVISING THE LAWS GOVERNING THE CHIROPRACTIC LEGAL PANEL; CLARIFYING THE STATUS OF THE PANEL AS A QUASI-GOVERNMENTAL ENTITY; REVISING THE SELECTION PROCEDURE FOR THE PANEL; REVISING THE FILING REQUIREMENTS FOR DECISIONS OF THE PANEL; AMENDING SECTIONS 27-12-104, 27-12-402, AND 27-12-605, MCA; AND PROVIDING AN EFFECTIVE DATE.	652
200	(<i>Senate Bill No. 42; Keenan</i>) CLARIFYING AND RECONCILING THE DUTIES OF THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE AND A SERVICE AREA AUTHORITY BOARD FOR THE DEVELOPMENT OF POLICIES, PLANS, AND BUDGETS FOR THE DELIVERY OF MENTAL HEALTH SERVICES TO CHILDREN; AND AMENDING SECTIONS 52-2-304 AND 53-21-1006, MCA	653
201	(<i>Senate Bill No. 103; Cromley</i>) PROVIDING THAT INTERNET GAMBLING IS AN ILLEGAL GAMBLING ENTERPRISE EXCEPT AS SPECIFICALLY AUTHORIZED BY MONTANA LAW; DEFINING THE TERM AND PROVIDING EXCEPTIONS; AND AMENDING SECTION 23-5-112, MCA	656
202	(<i>Senate Bill No. 105; Cobb</i>) EXPANDING THE TYPES OF LICENSED HEALTH CARE PROFESSIONALS THAT ARE REQUIRED FOR RINGSIDE ATTENDANCE AT A BOXING OR WRESTLING EVENT; AMENDING SECTION 23-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	660
203	(<i>Senate Bill No. 129; Wheat</i>) REVISING LAWS RELATING TO THE CREATION, CONSOLIDATION, AND FUNDING OF PUBLIC LIBRARIES AND PUBLIC LIBRARY DISTRICTS; ESTABLISHING A LIBRARY DEPRECIATION RESERVE FUND; AND AMENDING SECTIONS 22-1-326, 22-1-327, 22-1-330, 22-1-702, 22-1-705, AND 22-1-707, MCA	661
204	(<i>Senate Bill No. 130; Ryan</i>) REQUIRING THE TRANSFER OF INTEREST EARNED ON THE MICROBUSINESS DEVELOPMENT LOAN ACCOUNT TO THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; REQUIRING THE RETENTION OF INTEREST EARNED BY THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; AMENDING SECTION 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE.	665
205	(<i>Senate Bill No. 134; Wheat</i>) CLARIFYING APPLICATION OF TITLE 33, MCA, STATUTES TO CAPTIVE INSURANCE COMPANIES REGARDING VOLUNTARY DISSOLUTIONS AND LIMITS ON AGGREGATE PREMIUM TAXES AND CERTAIN OTHER TAXES; CLARIFYING THAT RISK RETENTION GROUP STATUTES APPLY TO CERTAIN CAPTIVE INSURERS; AND AMENDING SECTIONS 33-28-105, 33-28-201, AND 33-28-207, MCA	667

206	(Senate Bill No. 135; Squires) INCREASING THE PENALTY FOR KNOWINGLY FILING FALSE INFORMATION ON CERTAIN STATEMENTS FILED WITH THE STATE AUDITOR'S OFFICE; AMENDING SECTION 33-2-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	671
207	(Senate Bill No. 136; Steinbeisser) REQUIRING THE SECRETARY OF STATE TO MAINTAIN A CENTRAL FILING SYSTEM FOR CERTAIN AGRICULTURAL LIENS THAT MEETS THE REQUIREMENTS OF FEDERAL LAW TO PROTECT PURCHASERS OF FARM PRODUCTS; DESIGNATING THE SECRETARY OF STATE'S OFFICE AS THE APPROPRIATE OFFICE IN WHICH TO FILE AN EFFECTIVE FINANCING STATEMENT FOR THE PURPOSES OF CERTAIN AGRICULTURAL LIENS; AND AMENDING SECTIONS 2-15-401, 30-9A-302, AND 30-9A-501, MCA	672
208	(Senate Bill No. 152; Ryan) DEFINING "BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS" AS REQUIRED BY ARTICLE X, SECTION 1(3), OF THE MONTANA CONSTITUTION; IDENTIFYING THE EDUCATIONALLY RELEVANT FACTORS ON WHICH THE BASIC SYSTEM IS ESTABLISHED; PROVIDING DEFINITIONS; PROVIDING A STATEMENT OF LEGISLATIVE GOALS FOR PUBLIC SCHOOLS; REQUIRING THE BOARD OF PUBLIC EDUCATION TO SUBMIT NEW OR PROPOSED AMENDMENTS TO ACCREDITATION STANDARDS TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE FOR REVIEW AND FOR A DETERMINATION OF FISCAL IMPACT FOR INCLUSION IN THE EXECUTIVE BUDGET; REQUIRING THE LEGISLATURE TO DETERMINE THE COSTS OF THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; REQUIRING THAT THE LEGISLATURE AUTHORIZE A STUDY AT LEAST EVERY 10 YEARS TO REASSESS THE EDUCATIONAL NEEDS AND COSTS RELATED TO THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND INCORPORATE THE RESULTS OF THOSE REASSESSMENTS INTO THE STATE'S FUNDING FORMULA IF NECESSARY; AMENDING SECTIONS 20-1-101, 20-7-101, AND 20-9-303, MCA; REPEALING SECTIONS 20-2-115 AND 20-9-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	674
209	(Senate Bill No. 162; Mangan) GENERALLY REVISING THE LAWS RELATING TO THE BONDING OF COUNTY OFFICIALS AND EMPLOYEES AND CITY OR TOWN OFFICERS AND EMPLOYEES; EXEMPTING COUNTY AND MUNICIPAL OFFICERS FROM THE GENERAL PROVISIONS RELATED TO OFFICIAL BONDS; REMOVING THE REQUIREMENT THAT BONDS BE APPROVED BY THE COUNTY ATTORNEY OR CITY OR TOWN ATTORNEY AND FILED WITH THE COUNTY CLERK AND RECORDER OR CITY OR TOWN CLERK; REMOVING THE REQUIREMENT THAT GROUP BONDS COMPLY WITH CERTAIN CONDITIONS; REMOVING THE REQUIREMENT THAT BONDS BE PURCHASED THROUGH A COMPETITIVE BID PROCESS; ALLOWING A SELF-INSURANCE PLAN TO PROVIDE THE BONDS; PROHIBITING A LOCAL GOVERNMENT OFFICIAL FROM COLLECTING ON THE OFFICIAL'S BOND IF THE OFFICIAL OVERSPENDS THE APPROPRIATION FOR A FUND; REMOVING THE BONDING PROVISIONS RELATED SPECIFICALLY TO A SHERIFF; AMENDING SECTIONS 2-9-501, 2-9-701, 2-9-703, 2-9-803, 2-9-804, AND 7-6-4005, MCA; REPEALING SECTION 2-9-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	680

MONTANA SESSION LAWS 2005

xxx

- 210 (*Senate Bill No. 165; Mangan*) REVISING CONSUMER LOAN LAWS; PROVIDING THAT A CONSUMER OF A DEFERRED DEPOSIT LOAN OR A TITLE LOAN HAS THE RIGHT TO RESCISSION THROUGH THE FIRST BUSINESS DAY FOLLOWING THE EXECUTION OF THE LOAN AGREEMENT; ALLOWING ARBITRATION CLAUSES IN LOAN AGREEMENTS; ESTABLISHING FAIRNESS STANDARDS FOR MANDATORY ARBITRATION CLAUSES IN DEFERRED DEPOSIT LOAN AND TITLE LOAN AGREEMENTS; AND AMENDING SECTIONS 31-1-715, 31-1-723, AND 31-1-816, MCA 681
- 211 (*Senate Bill No. 178; Barkus*) AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE PERMITS AND ADOPT RULES FOR THE USE OF AIRCRAFT BY LANDOWNERS TO PROTECT THEIR PROPERTY BY DRIVING, HERDING, OR HAZING GAME ANIMALS; AMENDING SECTION 87-3-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 685
- 212 (*Senate Bill No. 254; Gebhardt*) UPDATING SERVICE CREDIT ELIGIBILITY REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS; AND AMENDING SECTION 19-17-108, MCA 687
- 213 (*Senate Bill No. 316; Lind*) REQUIRING EACH MEDICAL MALPRACTICE INSURER TO INCLUDE CERTAIN INFORMATION, BASED UPON THE INSURER'S EXPERIENCE IN THIS STATE, IN ITS ANNUAL STATEMENT TO THE COMMISSIONER OF INSURANCE; AND PROVIDING AN EFFECTIVE DATE. 687
- 214 (*Senate Bill No. 317; Lind*) REGULATING THE CONVERSION OF A NONPROFIT HEALTH ENTITY TO A FOR-PROFIT CORPORATION OR ENTITY OR A MUTUAL BENEFIT CORPORATION OR ENTITY; PROVIDING DEFINITIONS; PROVIDING FOR APPROVAL BY THE ATTORNEY GENERAL AND THE STATE AUDITOR; PROVIDING CRITERIA FOR APPROVAL; PROVIDING FOR PUBLIC RECORDS, NOTICE, AND HEARING; PROVIDING FOR EXPERTS AND COSTS; PROVIDING PROCEDURES AND RULEMAKING AUTHORITY; PROVIDING FOR DISTRIBUTION OF PROCEEDS OF A CONVERSION TRANSACTION; AMENDING SECTIONS 35-2-609, 35-2-617, AND 35-2-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 688
- 215 (*Senate Bill No. 359; Story*) REVISING CERTAIN STATUTES RELATED TO SCHOOL DISTRICT ENROLLMENT; ALLOWING TUITION TO BE PAID FOR A NONRESIDENT PUBLIC SCHOOL STUDENT WHO REACHES THE AGE OF 18 DURING THE SCHOOL YEAR; MEASURING ENROLLMENT IN AGGREGATE HOURS TO DETERMINE PORTIONS OF FULL-TIME ENROLLMENT AND SETTING THE CONDITIONS UNDER WHICH ENROLLMENT IS INCLUDED IN THE CALCULATION OF AVERAGE NUMBER BELONGING FOR A SCHOOL DISTRICT; DEFINING "AGGREGATE HOURS"; AMENDING SECTIONS 20-1-101, 20-5-322, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 701
- 216 (*House Bill No. 688; Franklin*) ESTABLISHING THE PATRICK G. GALVIN MEMORIAL HIGHWAY BETWEEN GREAT FALLS AND THE INTERSECTION OF MONTANA HIGHWAY 3 AND U.S. HIGHWAY 89 AT ARMINGTON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 707
- 217 (*Senate Bill No. 375; Wheat*) REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY

	ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . .	708
218	<i>(Senate Bill No. 470; Harrington)</i> CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	709
219	<i>(House Bill No. 150; Galvin-Halero)</i> ALLOWING A PUBLIC OFFICIAL TO HAVE A MONTANA FLAG DRAPED OVER THE OFFICIAL'S CASKET	709
220	<i>(House Bill No. 153; Noennig)</i> CLARIFYING THE PUBLIC SERVICE COMMISSION'S EXISTING AUTHORITY TO REVIEW AND APPROVE MATERIAL AFFILIATE TRANSACTIONS OF REGULATED ENERGY UTILITIES; DEFINING CERTAIN TERMS; REQUIRING THAT A REGULATED ENERGY UTILITY MAY NOT ENTER INTO A MATERIAL AFFILIATE TRANSACTION WITHOUT THE COMMISSION'S REVIEW AND APPROVAL; PROVIDING AN EXEMPTION; PROVIDING THE PUBLIC SERVICE COMMISSION WITH RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	710
221	<i>(House Bill No. 199; Olson)</i> REVISING LAWS RELATED TO ENERGY POLICY DEVELOPMENT AND LEGISLATIVE OVERSIGHT; PROVIDING THAT THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE HAS ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND MONITORING FUNCTIONS FOR THE PUBLIC SERVICE COMMISSION; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE INSTEAD OF THE ENVIRONMENTAL QUALITY COUNCIL TO MAINTAIN A CONTINUAL PROCESS TO DEVELOP THE COMPONENTS OF A COMPREHENSIVE STATE ENERGY POLICY; AMENDING SECTIONS 5-5-230, 90-4-1002, AND 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	711
222	<i>(House Bill No. 280; Wagman)</i> EXPANDING THE AUTHORIZED USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION TO INCLUDE ALL ARRAIGNMENTS, ACCEPTANCE OF PLEAS, AND SENTENCING HEARINGS; CLARIFYING THE REQUIREMENTS FOR AUDIO-VIDEO COMMUNICATIONS; REQUIRING THE COURT TO INFORM THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE USE OF AUDIO-VIDEO COMMUNICATIONS; AMENDING SECTIONS 46-12-201, 46-12-211, 46-16-105, 46-16-123, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN EFFECTIVE DATE	713
223	<i>(House Bill No. 301; Galvin-Halero)</i> AUTHORIZING THE CONTINUING SALE OF LEWIS AND CLARK BICENTENNIAL SPECIALTY LICENSE PLATES; PROVIDING THAT REVENUE FROM THE LICENSE PLATE SALES BE ALLOCATED TO THE DEPARTMENT OF COMMERCE AND THE MONTANA HISTORICAL SOCIETY AS THE SUCCESSORS TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO BE ALLOCATED TO CERTAIN PRIVATE, NONPROFIT ASSOCIATIONS THAT SUPPORT LEWIS AND CLARK DESTINATION SITES AND TO BE USED FOR PROJECTS RELATED TO LEWIS AND CLARK; ESTABLISHING STATE SPECIAL REVENUE ACCOUNTS FOR THE RECEIPT OF LICENSE PLATE REVENUE; PROVIDING FOR THE ALLOCATION AND USE OF THE REVENUE IN THE ACCOUNTS; REVISING THE DEFINITION OF "SPONSOR" WITH REGARD TO GENERIC SPECIALTY LICENSE PLATES TO INCLUDE A SUCCESSOR TO A SPONSOR TERMINATING BY LAW; ELIMINATING CERTAIN	

	STATUTORY REFERENCES TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION; AMENDING SECTIONS 2-15-150, 2-15-151, 2-17-808, 17-7-502, 61-3-473, 61-3-476, 61-3-477, AND 61-3-480, MCA; REPEALING SECTION 2-17-809, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 135, CHAPTER 114, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES	717
224	(<i>House Bill No. 316; Callahan</i>) REVISING LAWS RELATED TO FEES CHARGED BY THE PUBLIC SERVICE COMMISSION; ELIMINATING A REQUIREMENT THAT FEES OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION BE COMMENSURATE WITH COSTS; REQUIRING THAT FEES SET BY THE DEPARTMENT MUST BE REASONABLE; PROVIDING ADDITIONAL EXCEPTIONS TO THE REQUIREMENT THAT FEES OF THE DEPARTMENT NOT EXCEED \$500; REQUIRING FEES COLLECTED BY THE DEPARTMENT BE DEPOSITED IN A STATE REVENUE FUND TO THE CREDIT OF THE DEPARTMENT; AMENDING SECTIONS 69-1-114 AND 69-1-402, MCA; AND PROVIDING AN EFFECTIVE DATE.	723
225	(<i>House Bill No. 483; Bergren</i>) PROHIBITING POLICE OFFICERS FROM GOING ON STRIKE; PROVIDING FOR BINDING ARBITRATION IN LABOR NEGOTIATIONS INVOLVING POLICE OFFICERS; PROVIDING PROCEDURES FOR BINDING ARBITRATION; AMENDING SECTION 7-32-4114, MCA; AND PROVIDING AN EFFECTIVE DATE	724
226	(<i>House Bill No. 492; Morgan</i>) PROVIDING FOR THE ABANDONMENT OF A PORTION OF THE RIGHT-OF-WAY OR FOR ABANDONMENT OF HIGHWAY PROPERTY WHEN THE CONTIGUOUS PROPERTY HAS BEEN SUBDIVIDED PRIOR TO ABANDONMENT AND WHEN IT IS DETERMINED TO NOT BE NECESSARY TO THE LAYING OUT, ALTERING, CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF A ROAD OR HIGHWAY; PROVIDING CRITERIA AND PROCEDURES FOR THE ABANDONMENT; AMENDING SECTIONS 60-2-107, 60-4-201, 60-4-202, 60-4-203, AND 60-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	727
227	(<i>House Bill No. 514; Gutsche</i>) INCREASING THE RESTITUTION FOR THE ILLEGAL TAKING OF A GRIZZLY BEAR; AMENDING SECTIONS 87-1-111 AND 87-1-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	732
228	(<i>House Bill No. 746; Klock</i>) CLARIFYING MOTOR VEHICLE REGISTRATION REQUIREMENTS FOR NATIONAL GUARD AND RESERVE MEMBERS WHO ARE STATIONED OUTSIDE MONTANA; AND AMENDING SECTION 61-3-456, MCA.	733
229	(<i>Senate Bill No. 21; Grimes</i>) REGULATING DAMAGES THAT MAY BE GRANTED FOR MEDICAL MALPRACTICE THAT REDUCES A PATIENT'S CHANCE OF RECOVERY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	734
230	(<i>Senate Bill No. 29; Schmidt</i>) EXEMPTING INDIVIDUALS CONVICTED OF A FELONY DRUG OFFENSE FROM THE FEDERAL PROHIBITION ON ELIGIBILITY FOR BENEFITS UNDER FOOD STAMPS OR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES UNDER CERTAIN CONDITIONS; AUTHORIZING THE ADOPTION OF RULES GOVERNING TESTING AND REPORTING REQUIREMENTS TO ALLOW FELONY DRUG OFFENDERS TO RECEIVE BENEFITS; AMENDING SECTIONS 53-4-212 AND 53-4-231, MCA; AND PROVIDING AN EFFECTIVE DATE	735

231	(<i>Senate Bill No. 32; Cromley</i>) INCLUDING MINOR SIDEWALK REPAIR IN STREET MAINTENANCE DISTRICTS; AND AMENDING SECTION 7-12-4401, MCA	738
232	(<i>Senate Bill No. 38; Schmidt</i>) DOUBLING THE PENALTIES FOR VIOLATION OF SPECIAL SPEED LIMITS IMPOSED NEAR SCHOOLS; PROVIDING THAT A PORTION OF MONEY COLLECTED FROM THE FINES BE USED FOR PURPOSES OF ERECTING SIGNS OR OTHER LAW ENFORCEMENT NEEDS; AND AMENDING SECTIONS 3-10-601, 46-17-402, AND 46-18-235, MCA	738
233	(<i>Senate Bill No. 39; Mangan</i>) PROVIDING THAT A PERSON USING A WHEELCHAIR MUST BE CONSIDERED TO BE A PEDESTRIAN; CLARIFYING THAT WHEELCHAIRS ARE NOT VEHICLES OR MOTOR VEHICLES; PROVIDING, WITH CERTAIN EXCEPTIONS, THAT A PERSON USING A WHEELCHAIR IS SUBJECT TO THE PRIVILEGES AND RESTRICTIONS ACCORDED A PEDESTRIAN; REMOVING THE PROVISION ALLOWING THE USE OF CERTAIN WHEELCHAIRS TO BE REGULATED BY CITIES AND TOWNS; AMENDING SECTIONS 61-1-102, 61-1-103, 61-1-308, 61-8-501, AND 61-8-506, MCA; AND REPEALING SECTIONS 49-4-311 AND 49-4-312, MCA	740
234	(<i>Senate Bill No. 76; Laslovich</i>) ALLOWING THE LIMITED DEVELOPMENT OF LOST CREEK STATE PARK TO INCLUDE A CAMP HOST PAD; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	742
235	(<i>Senate Bill No. 77; Hansen</i>) MAKING PERMANENT THE HUNTER MANAGEMENT AND THE HUNTING ACCESS ENHANCEMENT PROGRAMS, WHICH ENCOURAGE PUBLIC ACCESS TO PRIVATE AND PUBLIC LANDS FOR HUNTING PURPOSES BY PROVIDING INCENTIVES TO LANDOWNERS AND BY PROVIDING RESTRICTIONS ON LANDOWNER LIABILITY; MAKING PERMANENT THE PROGRAMS' FUNDING SOURCES FROM VARIOUS LICENSE FEES; MAKING PERMANENT THE PRIVATE LANDS/PUBLIC WILDLIFE REVIEW COMMITTEE AND REQUIRING BIENNIAL REPORTS ON PROGRAM SUCCESS AND COMMITTEE SUGGESTIONS; AMENDING SECTION 87-1-269, MCA, SECTION 18, CHAPTER 459, LAWS OF 1995, AND SECTION 6, CHAPTER 544, LAWS OF 1999; REPEALING SECTION 8, CHAPTER 544, LAWS OF 1999, SECTION 9, CHAPTER 216, LAWS OF 2001, AND SECTION 29, CHAPTER 407, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	743
236	(<i>Senate Bill No. 95; Roush</i>) DEFINING THE TERM "OIL OR GAS WELL FACILITY"; DELAYING THE REQUIREMENT TO APPLY FOR AN AIR QUALITY PERMIT FOR AN OIL OR GAS WELL FACILITY TO JANUARY 3, 2006, OR 60 DAYS AFTER THE INITIAL WELL COMPLETION DATE, WHICHEVER IS LATER; REQUIRING ADOPTION OF RULES TO REGULATE FACILITIES UNTIL A PERMIT IS ISSUED; TRANSFERRING RULEMAKING AUTHORITY FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-218, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	744
237	(<i>Senate Bill No. 126; Brueggeman</i>) REQUIRING THE OWNER OF A MOTORBOAT, SAILBOAT, OR PERSONAL WATERCRAFT TO VERIFY USE OF THE ORIGINAL IDENTIFYING NUMBER EVERY 3 YEARS BY OBTAINING VALIDATION DECALS AT NO COST; REQUIRING THE OWNER OF A VESSEL TO AFFIX THE VALIDATION DECALS TO THE FORWARD HALF OF THE VESSEL; ESTABLISHING LIMITS ON	

- PENALTIES FOR NONCOMPLIANCE; DEFINING "VALIDATION DECAL"; ALLOWING ALL NEW OWNERS 40 DAYS TO OBTAIN AND DISPLAY REGISTRATION AND VALIDATION DECALS AND TO APPLY FOR A NEW CERTIFICATE OF NUMBER; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PAY FOR INITIAL PROGRAMMING COSTS; AMENDING SECTIONS 23-2-502, 23-2-511, 23-2-512, AND 23-2-513, MCA; AND PROVIDING AN EFFECTIVE DATE 756
- 238 (*Senate Bill No. 206; Lewis*) PROVIDING THAT THE PAY INCREASE FOR THE FIRST COMPLETE PAY PERIOD THAT INCLUDES JANUARY 1, 2005, APPLIES TO ALL STATE EMPLOYEES; ENSURING THAT STATE EMPLOYEES WHO WERE PAID LESS THAN 25 CENTS PER HOUR LESS THAN THE MAXIMUM SALARY ACCORDING TO THE PAY SCHEDULE CONTAINED IN 2-18-312, MCA, WILL CONTINUE TO RECEIVE THE FULL BENEFIT OF THE PAY INCREASE FOR ALL STATE EMPLOYEES THAT OCCURRED ON JANUARY 1, 2005; AMENDING SECTION 2-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 763
- 239 (*Senate Bill No. 214; Gebhardt*) CLARIFYING THE DAMAGES TO BE AWARDED FOR THE TAKING OF TIMBER WITHOUT LAWFUL AUTHORITY; STATING THE DAMAGES FOR AN INADVERTENT TAKING; STATING THE DAMAGES FOR A TAKING BY PUBLIC OFFICERS OR EMPLOYEES FOR THE PURPOSES OF A HIGHWAY; STATING THE DAMAGES FOR A WILLFUL, WANTON, OR MALICIOUS TAKING; AMENDING SECTION 70-16-107, MCA; AND REPEALING SECTION 70-16-108, MCA. 765
- 240 (*Senate Bill No. 225; Cocchiarella*) AUTHORIZING COUNTIES, CITIES, AND TOWNS TO INVEST IN CERTIFICATES OF DEPOSIT IN IN-STATE FEDERALLY INSURED FINANCIAL INSTITUTIONS THAT ARRANGE FOR THE DEPOSIT OF FUNDS IN OTHER FEDERALLY INSURED FINANCIAL INSTITUTIONS ON A RECIPROCAL BASIS; AMENDING SECTION 7-6-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 766
- 241 (*Senate Bill No. 244; Squires*) ALLOWING RECREATIONAL VEHICLES AND CAMPERS USED FOR NONCOMMERCIAL PURPOSES TO EXCEED VEHICLE WIDTH LIMITS UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF "TRAVEL TRAILER"; AMENDING SECTIONS 61-1-129, 61-1-131, 61-1-132, AND 61-10-102, MCA; AND PROVIDING AN EFFECTIVE DATE 767
- 242 (*Senate Bill No. 264; Smith*) PROHIBITING ARREST OR CITATION QUOTAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 769
- 243 (*Senate Bill No. 282; Smith*) REVISING THE LAW PROHIBITING RACIAL PROFILING; REQUIRING WRITTEN POLICIES AND COMPLAINT PROCEDURES; REQUIRING TRAINING FOR LAW ENFORCEMENT OFFICERS; AND AMENDING SECTION 44-2-117, MCA. 769
- 244 (*Senate Bill No. 286; Ryan*) REVISING CERTAIN NOTIFICATION AND RETAINAGE PROVISIONS WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC

	CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS 28-2-2104 AND 28-2-2110, MCA	771
245	<i>(Senate Bill No. 298; Tropila)</i> ADDRESSING THE PRODUCTION OF FISH AT AND PLANTING OF FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY; CLARIFYING THAT PRODUCTION OF FISH SPECIES AT THE FORT PECK MULTISPECIES FISH HATCHERY INCLUDES PALLID STURGEON, PADDLEFISH, AND CERTAIN CLASSIFIED WARM WATER SPECIES; PROVIDING THAT ANY WATERS LISTED IN THE 2005 MONTANA FISHING REGULATIONS THAT REQUIRE A WARM WATER STAMP AND WATERS PLANTED WITH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY BE PERMANENTLY INCLUDED IN THE LIST OF WATERS FOR WHICH A WARM WATER GAME FISH STAMP IS REQUIRED; AMENDING SECTIONS 87-3-235 AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	772
246	<i>(Senate Bill No. 322; Gillan)</i> PROVIDING FOR THE DUTY OF A HEALTH CARE PROVIDER WHO PERFORMS A MEDICAL EXAM AT THE REQUEST OF A PARTY OTHER THAN THE EXAMINEE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	774
247	<i>(Senate Bill No. 325; Gebhardt)</i> REVISING THE PROVISION OF INTERIOR ADVERTISING MATERIAL BY BREWERS, BEER IMPORTERS, AND WHOLESALERS TO RETAILERS; AND AMENDING SECTION 16-3-241, MCA	774
248	<i>(Senate Bill No. 329; Tester)</i> CLARIFYING THE STATE'S ROLE IN PROMOTING "MADE-IN-MONTANA" PRODUCTS; AND AMENDING SECTION 90-1-105, MCA	776
249	<i>(Senate Bill No. 335; Williams)</i> REVISING THE BLIND VENDOR VOCATIONAL OPPORTUNITIES PROGRAM TO INCLUDE MILITARY RESERVATIONS; AND AMENDING SECTION 18-5-402, MCA	776
250	<i>(Senate Bill No. 347; Lind)</i> REVISING LOBBYING REPORTING REQUIREMENTS FOR PRINCIPALS; AND AMENDING SECTION 5-7-208, MCA	778
251	<i>(Senate Bill No. 349; Cocchiarella)</i> PROVIDING THAT AN INSURANCE COMPANY MAY NOT REQUIRE A PERSON ENTITLED TO A CAR RENTAL WHILE THE PERSON'S OWN CAR IS BEING REPAIRED TO SELECT ANY ONE CAR RENTAL BUSINESS; AND PROVIDING THAT AN INSURANCE COMPANY THAT PROVIDES FOR DIRECT PAYMENT TO ANY ONE OR MORE CAR RENTAL BUSINESSES IN THIS STATE MUST PROVIDE FOR DIRECT PAYMENT TO ANY CAR RENTAL BUSINESS CHOSEN BY A PERSON FOR WHOM THE INSURANCE COMPANY IS OBLIGATED TO PROVIDE A CAR RENTAL	779
252	<i>(Senate Bill No. 350; Cocchiarella)</i> PROVIDING THAT DIVISIONS OF LAND THAT ARE EXEMPT FROM REVIEW AS SUBDIVISIONS ARE SUBJECT TO APPLICABLE LOCAL ZONING REGULATIONS; AND AMENDING SECTION 76-3-207, MCA.	780
253	<i>(Senate Bill No. 352; Grimes)</i> CLARIFYING THE INADMISSIBILITY OF MEDICAL MALPRACTICE LEGAL PANEL DECISIONS AND THE BASIS FOR THEM; AMENDING SECTION 27-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.	781
254	<i>(Senate Bill No. 355; Shockley)</i> REVISING THE PAYMENT OF TRANSCRIPT FEES TO COURT REPORTERS IN CRIMINAL CASES; AMENDING SECTION 3-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	782

- 255 (*Senate Bill No. 363; Williams*) GENERALLY REVISING THE LAWS RELATING TO SPECIAL EDUCATION; CLARIFYING THAT SCHOOL DISTRICTS MAY OFFER SPECIAL EDUCATION PROGRAMS FOR STUDENTS WHO ARE OUTSIDE OF THE REQUIRED AGES; REMOVING REQUIREMENTS THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION RECOMMEND AND APPROVE SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS; REPLACING THE TERM "DIAGNOSING" WITH "IDENTIFYING"; REVISING SPECIAL EDUCATION TUITION AND TRANSPORTATION STATUTES TO BE CONSISTENT WITH OTHER TUITION AND TRANSPORTATION STATUTES; CLARIFYING THAT SCHOOL DISTRICTS DO NOT NEED APPROVAL TO PROVIDE A FREE AND APPROPRIATE EDUCATION FOR SPECIAL EDUCATION STUDENTS; ENSURING THAT SCHOOL DISTRICTS MAY RECEIVE FUNDING FOR SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES WHO ARE UNDER 6 YEARS OF AGE; SHORTENING THE TIME PERIOD FOR APPOINTING A SURROGATE PARENT; MAKING THE REVISIONS NECESSARY TO COMPLY WITH THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-402, 20-7-403, 20-7-411, 20-7-414, 20-7-420, 20-7-431, 20-7-443, 20-7-461, AND 20-10-144, MCA; REPEALING SECTIONS 20-7-412, 20-7-441, AND 20-7-442, MCA; AND PROVIDING AN EFFECTIVE DATE 783
- 256 (*Senate Bill No. 365; Ellingson*) EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES THROUGH DECEMBER 31, 2009; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 791
- 257 (*Senate Bill No. 368; Cocchiarella*) ELIMINATING THE REQUIREMENT, WITH RESPECT TO THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND, THAT AN EMPLOYER HIRING OR RETAINING A CERTIFIED PERSON WITH A DISABILITY FILE INFORMATION WITH THE DEPARTMENT; PROVIDING CONDITIONS FOR SUBSEQUENT INJURY FUND ELIGIBILITY; AMENDING SECTION 39-71-905, MCA; REPEALING SECTION 39-71-906, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 794
- 258 (*Senate Bill No. 369; Cocchiarella*) PROVIDING THAT A DEALER THAT SELLS NEW AND USED MOTOR VEHICLES OR RECREATIONAL VEHICLES MAY OBTAIN ADDITIONAL DEMONSTRATOR PLATES TO BE PLACED ON VEHICLES BEING MOVED TO OR FROM SERVICE AND REPAIR FACILITIES BEFORE SALE; AND AMENDING SECTION 61-4-129, MCA 795
- 259 (*Senate Bill No. 370; Squires*) PROVIDING FOR COUNTY DETENTION OFFICER MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-301, AND 19-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE. 796
- 260 (*Senate Bill No. 373; Essmann*) GENERALLY REVISING LICENSING LAWS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; DEFINING "FINANCIAL STATEMENTS"; REQUIRING A \$100,000 SECURITY DEPOSIT IN CERTAIN CASES; PROVIDING THAT A SECURITY BOND, A LETTER OF CREDIT, OR MARKETABLE SECURITIES DEPOSITED WITH THE DEPARTMENT MAY BE USED TO PAY CERTAIN LIABILITIES; ALLOWING FOR AFFIDAVITS BY ASSURANCE ORGANIZATIONS TO VERIFY THAT FINANCIAL REQUIREMENTS ARE MET; PROVIDING FOR PROVISIONAL LICENSING; PROVIDING THAT A CLIENT IS NOT PRECLUDED FROM PROVIDING BENEFITS TO EMPLOYEES COEMPLOYED BY A

	PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AMENDING SECTIONS 39-8-102, 39-8-202, 39-8-204, 39-8-206, 39-8-207, AND 39-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	798
261	(<i>Senate Bill No. 410; Gallus</i>) EXPANDING THE POWER OF CITIES AND TOWNS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS UNDER PLANS APPROVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTIONS 7-3-1105, 7-3-1222, 7-31-4110, AND 87-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	807
262	(<i>Senate Bill No. 451; Wheat</i>) REVISING SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS LICENSING LAWS; REVISING THE DEFINITION OF "PRACTICE OF AUDIOLOGY" AND "PRACTICE OF SPEECH-LANGUAGE PATHOLOGY"; REVISING LICENSE EXEMPTION AND EXAMINATION REQUIREMENTS; AND AMENDING SECTIONS 37-15-101, 37-15-102, 37-15-103, 37-15-303, 37-15-304, 37-15-307, AND 37-15-313, MCA	809
263	(<i>Senate Bill No. 457; Gebhardt</i>) REVISING THE TIME PERIOD FOR AN INSURER TO GIVE NOTICE OF PREMIUM DUE; CLARIFYING NOTICE REQUIREMENTS FOR CANCELLATION OF INSURANCE POLICIES ON HOMES FOR NONPAYMENT; AND AMENDING SECTIONS 33-15-1103, 33-15-1105, AND 33-23-401, MCA	814
264	(<i>Senate Bill No. 460; Weinberg</i>) ALLOWING THE TRUSTEES OF A UNIFIED SCHOOL DISTRICT OR A JOINT BOARD OF TRUSTEES TO CONDUCT MORE THAN ONE MAIL BALLOT SCHOOL BOND ELECTION ON THE SAME DAY; AMENDING SECTION 13-19-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	815
265	(<i>Senate Bill No. 478; Gallus</i>) PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	816
266	(<i>Senate Bill No. 479; Lind</i>) SPECIFYING THE ENTITIES TO WHICH A BILL OR DEMAND FOR PAYMENT FOR ANATOMIC PATHOLOGY SERVICES MAY BE PRESENTED; PROHIBITING A PHYSICIAN OR OTHER PRACTITIONER OF THE HEALING ARTS FROM BILLING FOR ANATOMIC PATHOLOGY SERVICES UNLESS THOSE SERVICES WERE PROVIDED BY THE PHYSICIAN OR OTHER PRACTITIONER; SPECIFYING ENTITIES NOT REQUIRED TO REIMBURSE FOR CERTAIN ANATOMIC PATHOLOGY SERVICES; PROVIDING EXEMPTIONS; PROVIDING A REMEDY FOR VIOLATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE	818
267	(<i>Senate Bill No. 497; Tropila</i>) LIMITING THE TRANSFERABILITY OF THE LOCATION OF RETAIL BEER LICENSES AND ALL-BEVERAGES LIQUOR LICENSES THAT ARE BROUGHT TO WITHIN 5 MILES OF A CITY OR TOWN BECAUSE OF ANNEXATION; AMENDING SECTIONS 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	820
268	(<i>House Bill No. 643; Dowell</i>) PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO	

	ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE	823
269	(<i>Senate Bill No. 191; Grimes</i>) SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE NAME OF THE STATE AUDITOR BE CHANGED TO THE INSURANCE COMMISSIONER	828
270	(<i>House Bill No. 68; Andersen</i>) PROHIBITING THE ADMINISTRATION OF ANY MEDICINE TO A CHILD IN A LICENSED OR UNLICENSED DAY-CARE FACILITY WITHOUT PROPER AUTHORIZATION FROM THE CHILD'S PARENT OR GUARDIAN; PROVIDING AN EXCEPTION; PROVIDING DEFINITIONS; AND PROVIDING A CRIMINAL PENALTY	831
271	(<i>House Bill No. 105; Parker</i>) PROVIDING FOR PARTIAL PAYMENT OF THE SALARY OF A DEPUTY SHERIFF INJURED IN THE PERFORMANCE OF THE DEPUTY SHERIFF'S DUTY; PROVIDING FOR ASSIGNMENT TO LIGHT DUTY OR ANOTHER DEPARTMENT OR AGENCY; PROVIDING THAT THE DEPUTY SHERIFF AND EMPLOYER RETIREMENT CONTRIBUTIONS MUST BE BASED ON TOTAL COMPENSATION; AND REPEALING SECTION 19-7-810, MCA	833
272	(<i>House Bill No. 140; Parker</i>) CREATING A MONTANA CONSUMER DEBT MANAGEMENT SERVICES ACT; REQUIRING LICENSURE OF CREDIT COUNSELING SERVICES; ESTABLISHING REQUIREMENTS FOR DEBT MANAGEMENT PLANS ENTERED INTO BETWEEN CONSUMERS AND CREDIT COUNSELING SERVICES; DESIGNATING PROHIBITED PRACTICES FOR CREDIT COUNSELING SERVICES; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH RULEMAKING AUTHORITY; PROVIDING REMEDIES AND PENALTIES; REPEALING CERTAIN DEBT ADJUSTMENT LAWS; AMENDING SECTION 5, CHAPTER 125, LAWS OF 2005; REPEALING SECTIONS 31-3-201, 31-3-202, AND 31-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	834
273	(<i>House Bill No. 167; MacLaren</i>) INCREASING THE FREQUENCY AT WHICH THE SECRETARY OF STATE IS REQUIRED TO PROVIDE A LIST OF CERTAIN CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND LIMITED LIABILITY PARTNERSHIPS TO THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 15-31-603, MCA	838
274	(<i>House Bill No. 244; Lambert</i>) DESIGNATING TERRY, MONTANA, AS THE OFFICIAL HOME OF THE EVELYN CAMERON GALLERY AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS AND HIGHWAY SIGNS AND TO AMEND HIGHWAY SIGNS IN THE VICINITY OF TERRY TO REFLECT THE DESIGNATION	839

275	<i>(House Bill No. 297; Wiseman)</i> PROVIDING THAT PAPER BALLOTS MUST BE USED IN ANY ELECTION SO THAT VOTES MAY BE MANUALLY COUNTED; PROVIDING AN EXCEPTION ONLY TO FACILITATE VOTING BY DISABLED VOTERS; AND AMENDING SECTION 13-17-103, MCA	840
276	<i>(House Bill No. 307; Parker)</i> CREATING THE OFFENSE OF MONEY LAUNDERING; PROVIDING FOR THE FORFEITURE AND SALE OF PROPERTY USED IN THE COMMISSION OF THE OFFENSE; AND PROVIDING FOR SALE PROCEEDS TO BE DEPOSITED IN THE STATE GENERAL FUND	841
277	<i>(House Bill No. 326; Peterson)</i> CHANGING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF POSSESSION OF METHAMPHETAMINE; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR THE ESTABLISHMENT AND MAINTENANCE OF RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAMS AND TO ADOPT RULES FOR THE PROGRAMS; AND AMENDING SECTIONS 41-5-206, 45-9-102, AND 53-1-203, MCA	842
278	<i>(House Bill No. 379; Windy Boy)</i> ESTABLISHING A PERMANENT TRUST FUND FOR LONG-TERM OR PERPETUAL WATER TREATMENT AT THE ZORTMAN AND LANDUSKY MINE SITES; REQUIRING A TWO-THIRDS VOTE BY THE LEGISLATURE TO APPROPRIATE THE PRINCIPAL OF THE TRUST; DIRECTING THE TRANSFER OF FUNDS FROM THE ORPHAN SHARE ACCOUNT TO THE PERMANENT TRUST FUND; AMENDING SECTION 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE	847
279	<i>(House Bill No. 406; Bergren)</i> ADOPTING THE COUNTRY OF ORIGIN PLACARDING ACT; REQUIRING A COUNTRY OF ORIGIN PLACARD ON SPECIFIC COMMODITIES OFFERED FOR SALE IN MONTANA; PROVIDING PENALTIES FOR OFFERING FOR SALE SPECIFIC COMMODITIES WITHOUT INDICATING THE COUNTRY OF ORIGIN AND FOR REMOVING LABELS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP RULES TO IMPLEMENT THE COUNTRY OF ORIGIN PLACARDING ACT; AND PROVIDING EFFECTIVE DATES	850
280	<i>(House Bill No. 425; Parker)</i> GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS AND TELEMARKETING LAWS BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; REQUIRING COURTS TO AWARD ATTORNEY FEES TO THE PREVAILING PARTY IN AN ACTION FOR UNFAIR TRADE PRACTICES; TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 30-14-102, 30-14-121, 30-14-131, 30-14-143, 30-14-201, 30-14-202, 30-14-220, 30-14-222, 30-14-226, 30-14-1403, 30-14-1407, 30-14-1412, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-525, 61-4-526, AND 61-4-532, MCA; AND PROVIDING AN EFFECTIVE DATE	852

- 281 (*House Bill No. 668; Noonan*) PROVIDING EXCEPTIONS AND EXEMPTIONS TO PROHIBITIONS ON POSSESSION OF EXOTIC WILDLIFE FOR ROADSIDE MENAGERIES AND SCIENTIFIC TESTING FACILITIES; PROVIDING ENFORCEMENT ABILITY AND PRESCRIBED REMEDIES TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR VIOLATIONS; PROVIDING THE FISH, WILDLIFE, AND PARKS COMMISSION WITH AUTHORITY TO GRANT EXCEPTIONS; AMENDING SECTIONS 87-5-703, 87-5-704, 87-5-709, 87-5-712, AND 87-5-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 864
- 282 (*House Bill No. 721; Parker*) ESTABLISHING THE MONTANA DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT; RECOGNIZING A JURISDICTIONAL BASIS FOR STATE COURTS TO IMPLEMENT A VOLUNTARY DRUG OFFENDER ACCOUNTABILITY AND TREATMENT PROGRAM FOR QUALIFYING DRUG OFFENDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 867
- 283 (*Senate Bill No. 61; Cocchiarella*) PROVIDING FOR APPOINTMENT OF TWO LEGISLATIVE LIAISONS TO THE STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS; PROVIDING COMPENSATION AND LENGTH OF SERVICE; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 873
- 284 (*Senate Bill No. 88; Squires*) PROVIDING THAT AN ELECTOR MAY REQUEST ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING FOR A REQUEST FORM; AMENDING SECTIONS 13-13-212 AND 13-13-214, MCA; AND PROVIDING AN EFFECTIVE DATE 874
- 285 (*Senate Bill No. 299; Toole*) REVISING DEFINITIONS, COMPONENTS, AND PROCESSES REGARDING THE PRIVATIZATION OF STATE SERVICES AND PRIVATIZATION PLANS; EXTENDING AND IMPOSING DEADLINES REGARDING PRIVATIZATION PLANS AND REVIEW OF PRIVATIZATION PLANS; REQUIRING THE LEGISLATIVE AUDIT COMMITTEE TO MAKE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS REGARDING PRIVATIZATION PLANS; REQUIRING THE GOVERNOR TO APPROVE OR DISAPPROVE PRIVATIZATION PLANS; AND AMENDING SECTIONS 2-8-301, 2-8-302, 2-8-303, AND 5-13-203, MCA 876
- 286 (*Senate Bill No. 302; Ellingson*) GENERALLY REVISING ELECTION LAWS; REVISING VOTER REGISTRATION PROVISIONS; REVISING WHEN BALLOTS MUST BE PRINTED; REVISING VOTER IDENTIFICATION REQUIREMENTS; REVISING PROVISIONS ON ABSENTEE VOTING; CLARIFYING HOW REJECTED BALLOTS ARE HANDLED; REVISING PROVISIONS GOVERNING STANDARDS FOR VOTING SYSTEMS; AND AMENDING SECTIONS 13-2-108, 13-2-110, 13-2-115, 13-2-301, 13-2-514, 13-13-201, 13-13-205, 13-13-212, 13-13-213, 13-13-232, 13-13-233, 13-13-241, 13-13-243, 13-15-107, 13-15-201, 13-17-103, AND 13-17-212, MCA; REPEALING SECTIONS 13-2-302 AND 13-15-203, MCA; AND PROVIDING EFFECTIVE DATES 878
- 287 (*Senate Bill No. 324; Tester*) PROVIDING FOR PRESCRIPTION DRUG ACCESS AND INFORMATION; PROVIDING FOR A STATE PHARMACY ACCESS PROGRAM TO COMPLEMENT THE FEDERAL MEDICARE PART D PROGRAM; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ADMINISTER THE PROGRAM; PROVIDING FOR A PRESCRIPTION DRUG CONSUMER INFORMATION AND TECHNICAL ASSISTANCE PROGRAM AND EDUCATION OUTREACH FOR CONSUMERS AND PROFESSIONALS;

	AMENDING THE PRESCRIPTION DRUG EXPANSION PROGRAM AS A STATE PHARMACY DISCOUNT PROGRAM; AMENDING SECTIONS 53-6-1001, 53-6-1002, 53-6-1003, 53-6-1010, 53-6-1013, AND 53-6-1201, MCA; REPEALING SECTION 13, CHAPTER 551, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE	889
288	<i>(House Bill No. 22; McNutt)</i> PROVIDING THE FINDINGS AND PURPOSE OF IMPLEMENTING A WATER ADJUDICATION FEE; PROVIDING BENCHMARKS AND ACTION, INCLUDING ELIMINATION OF THE FEE, THAT MUST BE TAKEN IF BENCHMARKS ARE NOT MET BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE REEXAMINATION, PRIOR TO THE ISSUANCE OF A FINAL DECREE, OF CLAIMS IN BASINS THAT WERE VERIFIED; DEFINING "OWNER" FOR PURPOSES OF THE WATER ADJUDICATION FEE; ESTABLISHING WATER ADJUDICATION FEES; PROVIDING THAT THE FEE DOES NOT APPLY TO FEDERAL WATER RIGHTS AND INDIAN RESERVED AND ABORIGINAL CLAIMS TO WATER; PROVIDING THAT THE DEPARTMENT OF REVENUE COLLECT THE FEE ON BEHALF OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSIGN ANY UNPAID FEES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; PROVIDING THAT A LIEN MAY BE PLACED ON A WATER RIGHT IF THE FEE IS NOT PAID AFTER COLLECTION EFFORTS; ESTABLISHING A WATER ADJUDICATION ACCOUNT; ESTABLISHING THE AMOUNT OF REVENUE ALLOCATED EACH YEAR FROM THE ACCOUNT; PROVIDING THAT THE FEE MAY NOT BE ASSESSED ONCE \$31 MILLION HAS BEEN DEPOSITED IN THE ADJUDICATION ACCOUNT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE WATER COURT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND THE APPLICABLE LEGISLATIVE APPROPRIATION SUBCOMMITTEES; PROVIDING THE PROCESS FOR EXAMINATION OF CLAIMS IN VERIFIED BASINS PRIOR TO THE ISSUANCE OF A FINAL DECREE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, 85-2-231, AND 85-2-237, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . .	896
289	<i>(House Bill No. 67; Jent)</i> GENERALLY REVISING PROVISIONS OF THE MONTANA PROCUREMENT ACT; PROVIDING THAT THE PUBLIC HAS THE RIGHT TO INSPECT COMPETITIVE SEALED BIDS AFTER THEY ARE OPENED, SUBJECT TO SPECIFIED LIMITATIONS; PROVIDING THAT ART PURCHASED OR COMMISSIONED FOR A MUSEUM OR PUBLIC DISPLAY IS EXEMPT FROM THE ACT; REVISING THE INFORMATION IN A BID OR OFFER THAT MAY NOT BE DISCLOSED; REMOVING THE SUNSET FROM THE PROVISION AUTHORIZING AN AGENCY TO REQUEST AN ALTERNATIVE PROCUREMENT METHOD; REMOVING THE CAP ON THE AMOUNT FOR WHICH A LETTER OF CREDIT MAY BE ISSUED; PROVIDING AN EXCEPTION TO HOW LONG PERFORMANCE SECURITY ON A CONTRACT MUST BE KEPT; CLARIFYING EXCEPTIONS TO THE CONTRACT TIME PERIOD LIMIT SPECIFIED IN THE ACT; AMENDING SECTIONS 18-4-126, 18-4-132, 18-4-301, 18-4-303, 18-4-304, 18-4-308, 18-4-312, AND 18-4-313, MCA; REPEALING SECTION 29, CHAPTER 181, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE	904
290	<i>(House Bill No. 156; Henry)</i> ESTABLISHING RECIPROCAL TIME LIMITS FOR HEALTH INSURANCE CLAIM FILING, CLAIM REIMBURSEMENTS, AND CLAIM AUDITS; SETTING A TIME LIMIT	

- FOR HEALTH INSURANCE ISSUERS TO SEEK REIMBURSEMENT OR AN OFFSET OF A CLAIM AND PROVIDING EXCEPTIONS TO THE TIME LIMIT; REQUIRING AN AGREEMENT TO USE CURRENT CLAIM PAYMENTS TO OFFSET PAST OVERPAYMENTS OR INVALID PAYMENTS; AMENDING SECTION 33-22-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . 911
- 291 *(House Bill No. 295; Galvin-Halero)* PROHIBITING EXPIRATION DATES ON GIFT CARDS AND GIFT CERTIFICATES; ASSOCIATING OWNERSHIP WITH THE POSSESSOR OF THE CARD OR CERTIFICATE; LIMITING FEES; ALLOWING LIMITED CASH REDEMPTION; AND AMENDING SECTION 30-14-102, MCA. 913
- 292 *(House Bill No. 363; Eaton)* CHANGING THE MENTAL STATE ELEMENT OF AND EXPANDING THE OFFENSE OF ASSAULT WITH A BODILY FLUID; INCLUDING AN ASSAULT ON AN EMERGENCY RESPONDER OR A HEALTH CARE PROVIDER, INCLUDING A HEALTH CARE PROVIDER PERFORMING EMERGENCY SERVICES, WHILE THE HEALTH CARE PROVIDER IS ACTING IN THE COURSE AND SCOPE OF THE HEALTH CARE PROVIDER'S PROFESSION OR OCCUPATION; AND AMENDING SECTION 45-5-214, MCA 915
- 293 *(House Bill No. 528; Koopman)* REMOVING SEASONAL RESTRICTIONS ON THE BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; IMPOSING AN ANNUAL FEE OF \$400 ON THE LESSEE OF A RETAIL BEER AND WINE LICENSE AT THE YELLOWSTONE AIRPORT; AMENDING SECTIONS 16-4-304 AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 916
- 294 *(House Bill No. 628; Clark)* PROVIDING FOR A BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING FOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING BOARD DUTIES; REQUIRING A REPORT TO THE LEGISLATURE ON THE NEED FOR ANY ADDITIONAL REGULATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 919
- 295 *(House Bill No. 745; Matthews)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 921
- 296 *(Senate Bill No. 1; Schmidt)* PROVIDING FOR AN INDICATION ON A DRIVER'S LICENSE THAT A LICENSEE HAS EXECUTED A LIVING WILL DECLARATION; AND AMENDING SECTION 61-5-301, MCA . . 922
- 297 *(Senate Bill No. 104; Gillan)* PROVIDING A GRADUATED DRIVER'S LICENSING PROGRAM, WITH MOTOR VEHICLE OPERATION RESTRICTIONS, FOR PERSONS UNDER 18 YEARS OF AGE; AMENDING SECTIONS 61-5-106 AND 61-5-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . 923
- 298 *(Senate Bill No. 116; Laible)* REVISING LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; CREATING DEFINITIONS OF "MINOR SUBDIVISION" AND "PUBLIC UTILITY"; REQUIRING LOCAL SUBDIVISION REGULATIONS TO LIST MATERIALS REQUIRED IN A SUBDIVISION APPLICATION; REQUIRING THE REGULATIONS TO ADDRESS MULTIPLE HEARINGS; REQUIRING THE REGULATIONS TO ESTABLISH EVASION CRITERIA AND PROVIDE FOR AN APPEALS PROCESS; REQUIRING THE REGULATIONS TO ESTABLISH A PREAPPLICATION PROCESS; ESTABLISHING A COMPLETENESS REVIEW FOR THE APPLICATION AND REVIEW FOR SUFFICIENCY OF INFORMATION AND PROVIDING DEADLINES FOR THOSE REVIEWS; PROVIDING A PROCEDURE FOR

	MULTIPLE HEARINGS WHEN NEW INFORMATION IS PRESENTED TO A GOVERNING BODY; REVISING THE REVIEW PROCEDURE FOR FIRST AND SUBSEQUENT MINOR SUBDIVISIONS FROM A TRACT OF RECORD, ALLOWING FOR EXPEDITED REVIEW OF MINOR SUBDIVISIONS, AND ALLOWING A GOVERNING BODY TO ADOPT REGULATIONS SPECIFIC TO MINOR SUBDIVISIONS; REQUIRING THAT ANY DECISION BY A GOVERNING BODY ON A PROPOSED SUBDIVISION BE ACCOMPANIED BY INFORMATION ON THE APPEALS PROCESS, THE RELEVANT REGULATIONS AND STATUTES, DATA THE GOVERNING BODY USED TO MAKE ITS DECISION, AND CONDITIONS THAT APPLY IF APPROVAL IS CONDITIONAL; AMENDING SECTIONS 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-625, AND 76-4-127, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.	929
299	(<i>Senate Bill No. 185; Mangan</i>) AUTHORIZING COUNTIES, CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS TO IMPOSE IMPACT FEES UPON NEW DEVELOPMENT TO FUND ALL OR A PORTION OF THE PUBLIC FACILITY CAPITAL IMPROVEMENTS AFFECTED BY THE NEW DEVELOPMENT; PROVIDING DEFINITIONS; PROVIDING A METHOD FOR CALCULATING, IMPOSING, AND COLLECTING IMPACT FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	944
300	(<i>Senate Bill No. 255; Gebhardt</i>) CREATING THE AIRPORT COMPATIBILITY ACT; DEFINING "AIRPORT AFFECTED AREA"; REQUIRING A GOVERNING BODY TO DESIGNATE AN AIRPORT AFFECTED AREA FOR CERTAIN AIRPORTS AND REQUIRING REGULATIONS TO BE CONCURRENTLY ADOPTED; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE AIRPORT AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF AN AIRPORT AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; ESTABLISHING CERTAIN MINIMUM REQUIREMENTS FOR AIRPORT AFFECTED AREA REGULATIONS AND ESTABLISHING A PROCEDURE FOR DEVELOPING OR AMENDING THE REGULATIONS; PROVIDING FOR PRIOR NONCONFORMING USES IN AN AIRPORT AFFECTED AREA; PROVIDING FOR ACQUISITION OF PROPERTY UNDER CERTAIN CIRCUMSTANCES; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; PROVIDING PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT OR REGULATIONS; AMENDING SECTIONS 7-14-4801, 67-1-101, 67-10-102, 67-10-202, 67-10-231, 67-10-402, 67-10-902, 67-11-103, 67-11-201, 67-11-241, AND 70-30-102, MCA; REPEALING SECTIONS 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, AND 67-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	949
301	(<i>Senate Bill No. 274; Barkus</i>) REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT TO REVOKE AN EXEMPTION FOR MORTGAGE BANKERS ACTING AS MORTGAGE	

BROKERS; EXPANDING CERTAIN EXEMPTIONS; REQUIRING CERTAIN MORTGAGE BANKERS TO BE LICENSED AS MORTGAGE BROKERS; INCLUDING MORTGAGE BANKER EXPERIENCE AS QUALIFYING EXPERIENCE FOR A MORTGAGE BROKER LICENSE; AND AMENDING SECTIONS 32-9-102, 32-9-104, AND 32-9-109, MCA .

965

- 302 (*Senate Bill No. 290; Mangan*) REQUIRING CERTAIN WATER AND SANITATION INFORMATION TO BE SUBMITTED WITH A PRELIMINARY PLAT FOR LOCAL SUBDIVISION REVIEW; REQUIRING THE INFORMATION TO CONFORM WITH RULES AND STANDARDS ADOPTED AND PUBLISHED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; PROHIBITING A GOVERNING BODY FROM REQUIRING ADDITIONAL WATER AND SANITATION INFORMATION UNLESS CERTAIN PROCEDURES ARE FOLLOWED; REQUIRING A GOVERNING BODY TO COLLECT PUBLIC COMMENT ON THE WATER AND SANITATION INFORMATION AND REQUIRING THE SUBDIVIDER TO FORWARD THE INFORMATION AND PUBLIC COMMENT ON PROPOSED SUBDIVISIONS TO THE APPROPRIATE REVIEWING AUTHORITY; ALLOWING A GOVERNING BODY TO CONDITION APPROVAL ON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR ON CERTAIN WATER AND SANITATION INFORMATION BEING PROVIDED; PROHIBITING A GOVERNING BODY FROM CONDITIONALLY APPROVING OR DENYING A PROPOSED SUBDIVISION UNLESS THE DECISION IS BASED ON REGULATIONS THAT THE GOVERNING BODY IS AUTHORIZED TO ENFORCE; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, 76-3-608, 76-4-104, AND 76-4-125, MCA

967

- 303 (*Senate Bill No. 412; Cocchiarella*) PROVIDING FOR THE LICENSURE AND REGULATION OF ELEVATOR CONTRACTORS, ELEVATOR MECHANICS, AND ELEVATOR INSPECTORS; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE FOR A LIMITED MECHANIC'S LICENSE AND A LIMITED ELEVATOR CONTRACTOR'S LICENSE; PROVIDING FOR THE APPOINTMENT OF A LICENSED ELEVATOR MECHANIC TO THE BUILDING CODES COUNCIL; REGULATING THE DESIGN, CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REPAIR, INSPECTION, INSTALLATION, AND TESTING OF ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER EQUIPMENT; AMENDING SECTION 50-60-115, MCA; REPEALING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING EFFECTIVE DATES

977

- 304 (*Senate Bill No. 433; Lind*) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM FOR THE USE OF MEDICAID FUNDS NOT EXPENDED FOR THE PROVISION OF BASIC HEALTH AND SAFETY SERVICES BY INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; REQUIRING THE DEPARTMENT TO ESTABLISH INDIVIDUAL ACCOUNTS FOR CERTAIN PERSONS WITH DEVELOPMENTAL DISABILITIES; LIMITING THE PURPOSES FOR WHICH THE FUNDS IN THE ACCOUNTS MAY BE USED; REQUIRING THE DEPARTMENT TO MONITOR THE USE OF THE ACCOUNTS; REQUIRING A REPORT TO THE LEGISLATURE; AUTHORIZING THE DEPARTMENT TO ADOPT

	RULES FOR PURPOSES OF THE PILOT PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	987
305	<i>(Senate Bill No. 491; Gallus)</i> GENERALLY REVISING BENEFITS AND DEFINITIONS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; CHANGING HOW AVERAGE SALARIES ARE CALCULATED TO DETERMINE BENEFIT AMOUNTS; AMENDING SECTIONS 19-13-104, 19-13-704, 19-13-803, AND 19-13-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	988
306	<i>(House Bill No. 396; Becker)</i> ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED ASTHMA MEDICATION; PROVIDING DEFINITIONS; REQUIRING DOCUMENTATION; PROVIDING FOR NOTICE TO THE PARENTS OR GUARDIANS THAT THE SCHOOL DISTRICT MAY NOT INCUR LIABILITY FOR ANY INJURY ARISING OUT OF THE SELF-ADMINISTRATION OF MEDICATION UNLESS THE ACT OR OMISSION IS THE RESULT OF GROSS NEGLIGENCE, WILLFUL AND WANTON CONDUCT, OR AN INTENTIONAL TORT; PROVIDING AN EXEMPTION FOR YOUTH CORRECTIONAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE.	991
307	<i>(House Bill No. 6; Witt)</i> REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE RENEWABLE RESOURCE GRANT ACCOUNT; TEMPORARILY REVISING THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE	993
308	<i>(House Bill No. 7; Callahan)</i> PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; TEMPORARILY AUTHORIZING ADDITIONAL USES OF THE RECLAMATION AND DEVELOPMENT GRANTS STATE SPECIAL REVENUE ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; TRANSFERRING FUNDS; TEMPORARILY REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATES.	999
309	<i>(House Bill No. 8; Witt)</i> APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 58TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE	1002

- 310 (*House Bill No. 12; Sesso*) AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2006 AND 2007; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING THE REQUIREMENT THAT STATE AGENCIES PROVIDE INFORMATION CONCERNING POTENTIAL ENERGY SAVINGS; AMENDING SECTION 90-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE 1005
- 311 (*House Bill No. 30; Wanzenried*) CLARIFYING THAT LEGISLATORS-ELECT ARE ENTITLED TO COMPENSATION AND EXPENSES FOR AUTHORIZED PRESESSION ACTIVITY; AMENDING SECTION 5-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . 1007
- 312 (*House Bill No. 40; Harris*) EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1008
- 313 (*House Bill No. 49; Wilson*) GENERALLY REVISING THE LAW REQUIRING THE REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; AMENDING THE DEFINITION OF "SEXUAL OFFENSE"; CHANGING WITH WHOM AN OFFENDER MUST REGISTER; CLARIFYING THE PROCEDURE FOR NOTICE OF A CHANGE OF AN OFFENDER'S ADDRESS; CHANGING THE PROCEDURE FOR PETITIONING FOR RELIEF FROM REGISTRATION AFTER 10 YEARS; ALLOWING AN OFFENDER CONVICTED IN ANOTHER JURISDICTION TO BE GIVEN THE RISK LEVEL DESIGNATION ASSIGNED BY THAT JURISDICTION; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, AND 46-23-509, MCA 1009
- 314 (*House Bill No. 53; Jacobson*) PROVIDING THAT CERTAIN FUNDS COLLECTED BY OR ON BEHALF OF THE BOARD OF HORSERACING BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 23-4-105, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1013
- 315 (*House Bill No. 55; Wanzenried*) REQUIRING PERMANENT REGISTRATION OF TRAILER AND SEMITRAILER FLEETS; ESTABLISHING A PERMANENT REGISTRATION FEE; REQUIRING SURRENDER TO THE DEPARTMENT OF TRANSPORTATION OF THE REGISTRATION AND LICENSE PLATE OF A TRAILER OR SEMITRAILER THAT IS REMOVED FROM A FLEET; AMENDING SECTION 61-3-721, MCA; AND PROVIDING AN EFFECTIVE DATE. . . 1017
- 316 (*House Bill No. 70; Stahl*) EXEMPTING COUNTY COMMISSIONERS OF CERTAIN COUNTIES FROM THE RESTRICTION ON APPOINTMENT OF RELATIVES TO POSITIONS WITHIN THE COUNTY; REQUIRING THE COUNTY COMMISSIONER RELATED TO THE PERSON BEING APPOINTED TO ABSTAIN FROM VOTING ON THE APPOINTMENT; PROVIDING FOR SPECIFIC NOTICE OF THE INTENDED APPOINTMENT; AND AMENDING SECTION 2-2-302, MCA 1021
- 317 (*House Bill No. 73; Buzzas*) AUTHORIZING A COUNTY, CITY, TOWN, OR MUNICIPALITY TO IMPOSE A VOTED LEVY FOR PROGRAMS THAT PREVENT SUBSTANCE ABUSE; AND PROVIDING AN EFFECTIVE DATE 1022

318	(<i>House Bill No. 85; Kaufmann</i>) ELIMINATING CERTAIN REQUIREMENTS FOR REPORTING BY THE DEPARTMENT OF REVENUE TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE AND THE LEGISLATURE; AMENDING SECTIONS 15-6-218 AND 15-30-1114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1024
319	(<i>House Bill No. 89; Witt</i>) CHANGING THE REQUIREMENTS OF THE ELECTRONIC VIDEO GAMBLING MACHINE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; DEFINING "ELECTRONICALLY CAPTURED DATA"; ELIMINATING THE TAX CREDIT AND LOAN PROVISIONS FOR MACHINE OWNERS PARTICIPATING IN THE SYSTEM; ELIMINATING THE PLEDGE OF MACHINE TAXES TO GUARANTEE REPAYMENT OF THE LOANS; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; REPEALING SECTION 23-5-638, MCA, AND SECTION 10, CHAPTER 424, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE	1025
320	(<i>House Bill No. 104; Lenhart</i>) GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE PROVISION FOR ESTABLISHING A GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT AND ELIMINATING THE PROVISION'S CONTINGENT EFFECTIVE DATE; CLARIFYING PROVISIONS ON THE REDEPOSIT OF CONTRIBUTIONS FOR MEMBERSHIP SERVICE AND ON RETIREES RETURNING TO EMPLOYMENT BY STRIKING RELEVANT LANGUAGE IN CURRENT CODE SECTIONS AND RECODIFYING THE LANGUAGE AS NEW SECTIONS; PROVIDING FOR THE OPTION TO PURCHASE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SERVICE; REVISING CERTAIN PROVISIONS GOVERNING THE RECALCULATION OF BENEFITS WHEN A RETIRED MEMBER RETURNS TO EMPLOYMENT; PROVIDING FOR THE REDUCTION OF RETIREMENT BENEFITS IN LIEU OF CANCELING THE BENEFITS IN CERTAIN CIRCUMSTANCES; CLARIFYING PROVISIONS ON EMPLOYEE TERMINATION PAY CONTRIBUTIONS; AMENDING SECTIONS 19-20-208, 19-20-212, 19-20-302, 19-20-401, 19-20-407, 19-20-415, 19-20-602, 19-20-716, 19-20-718, 19-20-802, 19-20-804, 19-20-806, AND 19-20-1001, MCA, AND SECTION 29, CHAPTER 111, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1032
321	(<i>House Bill No. 109; Jent</i>) TRANSFERRING RESPONSIBILITY FOR THE MAINTENANCE OF THE CAPITOL COMPLEX GROUNDS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-811, 2-17-812, AND 2-17-817, MCA; AND PROVIDING AN EFFECTIVE DATE.	1047
322	(<i>House Bill No. 119; Golie</i>) MAKING PERMANENT THE CRITERIA FOR THE USE OF MOTORBOAT ACCOUNT FUNDS FOR BOATING FACILITIES, INCLUDING THE USE OF FUNDS TO MATCH FEDERAL FUNDS PURSUANT TO RECOMMENDATIONS OF THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO ADMINISTER DESIGNATED PARTS OF THE STATE RECREATIONAL BOATING SAFETY PROGRAM; MAKING PERMANENT THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AMOUNT OF THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX AT FOUR TIMES THE FEE DUE; REPEALING SECTION 6, CHAPTER 511, LAWS OF 1993, SECTIONS 9	

- AND 10, CHAPTER 476, LAWS OF 1995, AND SECTIONS 2, 3, AND 4, CHAPTER 95, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE 1050
- 323 *(House Bill No. 142; Ripley)* REVISING LAWS RELATING TO STATE FINANCE OF LOCAL WATER AND SEWER PROJECTS; AUTHORIZING THE ISSUANCE OF GRANT OR REVENUE ANTICIPATION NOTES BY THE BOARD OF EXAMINERS; AUTHORIZING FORGIVENESS OF CERTAIN LOANS TO DISADVANTAGED COMMUNITIES UNDER THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING ADDITIONAL USES OF THE PROCEEDS OF STATE GENERAL OBLIGATION BONDS; AUTHORIZING STATE DEBT; AMENDING SECTIONS 17-5-805, 75-5-1122, 75-6-226, AND 75-6-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1050
- 324 *(House Bill No. 169; McAlpin)* REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE TOBACCO MASTER SETTLEMENT AGREEMENT; CLARIFYING THE APPLICATION OF THE TOBACCO RESERVE FUND LAWS TO ROLL-YOUR-OWN TOBACCO; REQUIRING A TOBACCO PRODUCT MANUFACTURER WHO WISHES TO HAVE PRODUCTS LISTED ON THE ATTORNEY GENERAL'S DIRECTORY OF PRODUCTS PERMISSIBLE FOR SALE IN MONTANA TO DEMONSTRATE COMPLIANCE WITH THE LAW; ALLOWING THE ATTORNEY GENERAL TO REQUEST THE DEPARTMENT OF JUSTICE TO PROCEED JUDICIALLY TO SEEK REVOCATION OF A NONCOMPLIANT WHOLESALER'S LICENSE; CLARIFYING THE CALCULATION OF ATTORNEY FEES, COSTS, AND PENALTIES RECOVERED IN ENFORCEMENT ACTIONS; REVISING AND EXTENDING RULEMAKING AUTHORITY; REVISING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 16-11-402, 16-11-404, 16-11-502, 16-11-503, 16-11-507, 16-11-509, 16-11-511, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT VOIDNESS PROVISION 1053
- 325 *(House Bill No. 170; Wilson)* MAKING TECHNICAL CORRECTIONS TO THE LAW ON FUND TRANSFERS RELATING TO CERTAIN VEHICLE TAXES AND FEES; CLARIFYING THE YEARS IN WHICH MONEY FOR THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT AND FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IS ALLOCATED; CLARIFYING THE APPLICATION OF THE \$2 ANNUAL SEARCH AND RESCUE SURCHARGE; CLARIFYING THAT VEHICLE COUNTS NECESSARY FOR CERTAIN CALCULATIONS BE DETERMINED FOR VEHICLES EVEN IF VEHICLE REGISTRATION OCCURRED PRIOR TO JANUARY 1, 2004; AMENDING SECTION 15-1-122, MCA, AND SECTION 50, CHAPTER 592, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1061
- 326 *(House Bill No. 173; Heinert)* ALLOWING THE DEPARTMENT OF MILITARY AFFAIRS TO USE THE SEARCH AND RESCUE SURCHARGE MONEY IN THE STATE SPECIAL REVENUE ACCOUNT BOTH DURING THE FISCAL YEAR WHEN THE MONEY IS DEPOSITED AND DURING THE FOLLOWING FISCAL YEAR; AMENDING SECTION 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1064
- 327 *(House Bill No. 204; Witt)* CHANGING THE PURPOSE FOR WHICH THE DEPARTMENT OF JUSTICE MAY USE EXAMINATION COSTS PAID BY A MANUFACTURER SEEKING THE EXAMINATION AND APPROVAL OF A NEW VIDEO GAMBLING MACHINE OR

	ASSOCIATED EQUIPMENT OR A MODIFICATION TO AN APPROVED MACHINE OR ASSOCIATED EQUIPMENT; DELETING THE STATUTORY APPROPRIATION OF THE COSTS TO THE DEPARTMENT; AMENDING SECTIONS 17-7-502 AND 23-5-631, MCA; AND PROVIDING AN EFFECTIVE DATE.	1066
328	(<i>House Bill No. 211; Parker</i>) CLARIFYING THE TERM OF THE SUPREME COURT; AMENDING SECTION 3-2-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1068
329	(<i>House Bill No. 213; Gallik</i>) GENERALLY REVISING ADMINISTRATIVE PROVISIONS GOVERNING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS, THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT, AND THE LOCAL POLICE OFFICERS' RETIREMENT FUNDS; CLARIFYING TERMINOLOGY RELATED TO TERMINATION OF SERVICE AND EMPLOYMENT; REFINING THE DEFINITION OF "VESTED"; CLARIFYING SERVICE CREDIT IN MORE THAN ONE SYSTEM; CHANGING THE HOURS THAT MAY BE WORKED WHEN A RETIREE RETURNS TO WORK; PROVIDING FOR CORRECTIONS TO SERVICE PURCHASE ERRORS; DELETING THE BAN ON ESTABLISHING A NEW ACCOUNT FOR AN ALTERNATE PAYEE; CLARIFYING ELIGIBILITY TO APPLY FOR DISABILITY BENEFITS; CLARIFYING EDUCATION PROGRAM REQUIREMENTS; DELETING THE USE OF COVERED PAYROLL TERMINOLOGY REGARDING EMPLOYER CONTRIBUTIONS; CLARIFYING THE DEFINITION OF "COMPENSATION"; REVISING OPTIONAL MEMBERSHIP ELECTION PROVISIONS; CLARIFYING EMPLOYER PAYMENTS FOR EMPLOYEE SERVICE PURCHASES; CLARIFYING DISABILITY BENEFITS FOR PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS WHO JOINED BEFORE FEBRUARY 24, 1991; CLARIFYING SURVIVORSHIP PAYMENT OPTIONS; CLARIFYING RETIREMENT BENEFIT PAYMENT OPTION 4; CLARIFYING CERTAIN PROVISIONS IN THE DEFINED CONTRIBUTION RETIREMENT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CORRECTING AN OVERSIGHT TO ALLOW MEMBERS OF THE JUDGES' RETIREMENT SYSTEM TO PURCHASE MILITARY SERVICE; REVISING THE ELECTION OF GUARANTEED ANNUAL BENEFIT PROVISIONS IN THE JUDGES' RETIREMENT SYSTEM; ELIMINATING A PROVISION IN CERTAIN SYSTEMS THAT CONFLICTED WITH OTHER SYSTEMS' PROVISIONS REGARDING PAYMENTS TO MINOR CHILDREN; ELIMINATING A REQUIREMENT THAT FIRE DISTRICTS HAVE CERTAIN INSURANCE RATINGS IN ORDER FOR VOLUNTEER FIREFIGHTERS TO GET SERVICE CREDIT; REVISING CATCHUP PROVISIONS OF THE DEFERRED COMPENSATION PLAN; REVISING THE DEADLINE BY WHICH LOCAL POLICE FUND INFORMATION MUST BE SUBMITTED TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; COORDINATING DEPARTMENT OF JUSTICE PROVISIONS REGARDING INJURY AND REASSIGNMENT OF HIGHWAY PATROL OFFICERS WITH THE DISABILITY PROVISIONS OF THE HIGHWAY PATROL OFFICES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-2-502, 19-2-602, 19-2-703, 19-2-704, 19-2-706, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-112, 19-3-201, 19-3-316, 19-3-318, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-908, 19-3-1002, 19-3-1005, 19-3-1015, 19-3-1204, 19-3-1501, 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2114, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2126, 19-5-103, 19-5-402, 19-5-404, 19-5-410, 19-5-701, 19-5-902, 19-6-301, 19-6-402, 19-6-404, 19-6-505, 19-6-709, 19-7-301, 19-7-403,	

- 19-7-404, 19-7-801, 19-7-1001, 19-8-301, 19-8-502, 19-8-504, 19-8-801, 19-9-301, 19-9-703, 19-9-710, 19-9-804, 19-9-902, 19-9-905, 19-9-1202, 19-9-1207, 19-9-1208, 19-13-301, 19-13-605, 19-13-802, 19-13-805, 19-17-108, 19-17-407, 19-19-205, 19-50-103, 19-50-104, 44-1-515, AND 44-1-518, MCA; AND PROVIDING AN EFFECTIVE DATE. 1068
- 330 *(House Bill No. 299; Wells)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR DEPARTMENT OF TRANSPORTATION EQUIPMENT STORAGE BUILDINGS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1125
- 331 *(House Bill No. 324; Driscoll)* CREATING THE CRIME OF OBSTRUCTING HEALTH CARE FACILITY ACCESS 1126
- 332 *(House Bill No. 346; Golie)* ALLOWING CERTAIN RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO WORK WHILE CONTINUING TO RECEIVE A PENSION BENEFIT; PRESCRIBING ELIGIBILITY CRITERIA; AMENDING SECTIONS 19-17-102, 19-17-401, AND 33-22-136, MCA; AND PROVIDING AN EFFECTIVE DATE 1127
- 333 *(House Bill No. 436; Himmelberger)* ALLOWING A SUBDIVIDER TO DONATE LAND TO A SCHOOL DISTRICT, SUBJECT TO APPROVAL OF THE LOCAL GOVERNING BODY AND ACCEPTANCE BY SCHOOL DISTRICT TRUSTEES, TO FULFILL PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; AND AMENDING SECTIONS 7-16-2324 AND 76-3-621, MCA 1130
- 334 *(House Bill No. 440; Wiseman)* PROVIDING THAT ADMINISTRATIVE RULES OF THE DEPARTMENT OF AGRICULTURE INCLUDE A REQUIREMENT THAT THE OWNER OF AN ANHYDROUS AMMONIA TANK PLACE A LOCK ON THE TANK; PROVIDING THAT A VIOLATION FOR NOT INSTALLING A TANK LOCK MUST BE CONSIDERED A MINOR OFFENSE FOR A CERTAIN PERIOD OF TIME; PROVIDING FOR AN ANHYDROUS AMMONIA TANK LOCK PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 80-10-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1132
- 335 *(House Bill No. 450; Jopek)* REVISING THE LAWS GOVERNING THE ADMINISTRATION OF STATE LAND; PROVIDING FOR CONSIDERATION OF CERTAIN LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS WHEN CERTAIN SALES OF LAND ARE PROPOSED OR MADE; AMENDING SECTIONS 77-1-202, 77-1-904, AND 77-2-310, MCA; AND PROVIDING AN EFFECTIVE DATE. 1134
- 336 *(House Bill No. 451; Sonju)* AUTHORIZING ISSUANCE BY LOCAL GOVERNMENTS OF BONDS FOR THE CONSTRUCTION AND CONSTRUCTION ENGINEERING PHASES OF PROJECTS ON THE URBAN HIGHWAY SYSTEM; AUTHORIZING THE TRANSPORTATION COMMISSION TO ENTER INTO CONTRACTS WITH LOCAL GOVERNMENTS TO USE FEDERAL URBAN FUND APPORTIONMENT TO SECURE THE PAYMENT OF THE BONDS; AMENDING SECTION 60-2-127, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 1136
- 337 *(House Bill No. 470; Clark)* REQUIRING APPLICANTS TO PAY COSTS AND FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; AMENDING SECTIONS 75-1-202, 75-1-205, 75-1-207, 75-1-208, 75-2-104, 75-2-211, 75-10-922, 75-20-201, 75-20-216, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427,

	82-4-436, 85-2-124, AND 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . .	1138
338	<i>(House Bill No. 513; Raser)</i> EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 6, CHAPTER 590, LAWS OF 2003.	1165
339	<i>(House Bill No. 522; Jones)</i> PROVIDING AN APPROPRIATION TO THE BOARD OF REGENTS FOR DISTRIBUTION TO MONTANA STATE UNIVERSITY-BOZEMAN TO CONDUCT A FEASIBILITY STUDY CONCERNING THE TRAINING OF MONTANA DENTAL STUDENTS AT MONTANA STATE UNIVERSITY AND THE UNIVERSITY OF WASHINGTON.	1166
340	<i>(House Bill No. 591; Jopek)</i> CLARIFYING THE APPLICABILITY OF LOCAL ZONING REGULATIONS TO SAND AND GRAVEL OPERATIONS AND OPERATIONS THAT MIX CONCRETE OR BATCH ASPHALT; AMENDING SECTION 76-2-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1167
341	<i>(House Bill No. 666; Bergren)</i> RELATING TO COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING PETITIONS BY ALL PROPERTY OWNERS FOR THE CREATION OF A DISTRICT, APPOINTMENT OF DIRECTORS, AND THE INCURRENCE OF INDEBTEDNESS; CLARIFYING THE EFFECT OF PROTESTS AGAINST A METHOD OF LEVYING SPECIAL ASSESSMENTS; CLARIFYING PROTEST REQUIREMENTS AND ASSESSMENT PROCEDURES FOR CONDOMINIUM PROPERTY; AUTHORIZING THE ISSUANCE OF REVENUE BOND AND SPECIAL ASSESSMENT BOND INDEBTEDNESS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY TO ESTABLISH SUBDISTRICTS; AMENDING SECTIONS 7-13-2204, 7-13-2208, 7-13-2212, 7-13-2215, 7-13-2231, 7-13-2282, 7-13-2302, 7-13-2321, 7-13-2328, AND 7-13-2329, MCA; AND PROVIDING AN EFFECTIVE DATE	1167
342	<i>(House Bill No. 684; Maedje)</i> EXEMPTING VEHICLES TRAVELING ON U.S. HIGHWAY 93 WITHIN 10 MILES OF THE BORDER BETWEEN MONTANA AND CANADA FROM THE WEIGHT LIMITS DETERMINED BY THE FEDERAL BRIDGE FORMULA; VOIDING THE ACT IF THE EXEMPTION WOULD RESULT IN A SANCTION OF FEDERAL HIGHWAY FUNDS; AND AMENDING SECTION 61-10-107, MCA . . .	1174
343	<i>(House Bill No. 698; Lange)</i> ESTABLISHING A WARM WATER FISHERY ENHANCEMENT ACCOUNT; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ALLOW INDIVIDUALS TO MAKE VOLUNTARY CONTRIBUTIONS TO THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1175
344	<i>(House Bill No. 759; Koopman)</i> ALLOWING REGISTRATION OF CERTAIN FLEETS FOR A 9-MONTH PERIOD; AND AMENDING SECTION 61-3-318, MCA	1176
345	<i>(House Bill No. 772; Facey)</i> CREATING THE CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT; ESTABLISHING A PROGRAM TO MATCH FUNDS RAISED BY NONPROFIT ORGANIZATIONS WITH UP TO \$2,500 FROM INSURERS TO ASSIST CATASTROPHICALLY INJURED WORKERS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ADMINISTER THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.	1176

- 346 (*Senate Bill No. 33; Cobb*) DELETING THE REQUIREMENT THAT THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS PREPARE AND PRESENT A UNIFIED BUDGET TO THE LEGISLATURE AND STANDING AND INTERIM COMMITTEES; AND AMENDING SECTION 2-15-225, MCA 1180
- 347 (*Senate Bill No. 62; Perry*) REQUIRING THAT DISPOSITIONS OF CONTESTED CASES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE IN WRITING; AND AMENDING SECTIONS 2-4-603, 2-4-614, 2-4-623, AND 2-4-702, MCA 1182
- 348 (*Senate Bill No. 80; Perry*) PROHIBITING UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER BY A PERSON IN A MOTOR VEHICLE 1185
- 349 (*Senate Bill No. 86; Smith*) DEFINING TERMS RELATED TO IMPLEMENTATION OF THE FEDERAL INDIAN CHILD WELFARE ACT; CLARIFYING THE ROLE OF A QUALIFIED EXPERT WITNESS IN CASES INVOLVING INDIAN CHILDREN IN PROCEEDINGS SUBJECT TO THE INDIAN CHILD WELFARE ACT; AND AMENDING SECTIONS 41-3-102, 41-3-205, 41-3-432, 41-3-437, AND 41-3-609, MCA 1186
- 350 (*Senate Bill No. 110; Cobb*) IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT TO PROVIDE FOR IMPROVED COVERAGE OF THE HEALTH CARE AND RELATED NEEDS OF PARTICULAR GROUPS OF PERSONS; PROVIDING AUTHORITY FOR THE ESTABLISHMENT OF HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION INITIATIVES AND OTHER DEMONSTRATION PROJECTS UPON APPROVAL OF WAIVER OF FEDERAL LAW; AMENDING SECTIONS 53-2-101 AND 53-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1198
- 351 (*Senate Bill No. 122; Wheat*) REGULATING THE TRANSFER OF A BENEFICIARY'S STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN APPLICABILITY DATE 1205
- 352 (*Senate Bill No. 124; Roush*) ALLOWING MONEY IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO BE USED TO PAY THE COSTS OF ELIGIBLE PROJECTS ON AN INTERIM BASIS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1210
- 353 (*Senate Bill No. 127; Keenan*) FACILITATING THE IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT REGARDING PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; REVISING THE STATUTES AUTHORIZING PROGRAMS FOR HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; AUTHORIZING THE LONG-TERM CARE PREADMISSION SCREENING PROCESS; REMOVING AN INAPPROPRIATE APPLICATION OF MEDICAID STATE PLAN AUTHORITY TO THE PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES AND A REQUIREMENT FOR REPORTING COSTS OF PROVIDING HOME AND

	COMMUNITY-BASED SERVICES TO PERSONS CURRENTLY LIVING IN ASSISTED LIVING FACILITIES; AMENDING SECTIONS 53-6-101, 53-6-401, AND 53-6-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1211
354	(<i>Senate Bill No. 140; Gebhardt</i>) ESTABLISHING AN INTRASTATE MUTUAL AID SYSTEM TO AID IN REQUESTING ASSISTANCE FOR AND RESPONDING TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A POLITICAL SUBDIVISION OF THE STATE TO WITHDRAW FROM PARTICIPATION IN THE INTRASTATE MUTUAL AID SYSTEM; CREATING THE MONTANA INTRASTATE MUTUAL AID COMMITTEE AND DESCRIBING ITS MEMBERSHIP, DUTIES, AND AUTHORITY; ALLOWING FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA TO PARTICIPATE IN THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES	1218
355	(<i>Senate Bill No. 143; Laible</i>) PROVIDING FOR CONTINGENT TRANSFERS AND AN APPROPRIATION FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE	1225
356	(<i>Senate Bill No. 145; Harrington</i>) REVISING LAWS RELATED TO THE REGULATION OF PETROLEUM TANKS; REVISING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING REIMBURSEMENT ELIGIBILITY CRITERIA AND PROCEDURES; REQUIRING THE BOARD TO ANALYZE AND REPORT ON THE VIABILITY OF THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 2-15-2108, 75-11-308, 75-11-309, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE	1229
357	(<i>Senate Bill No. 160; Wheat</i>) ELIMINATING THE STATUTORY AUTHORITY OF THE LEGISLATURE TO ASSIGN HOLDOVER SENATORS TO DISTRICTS FOR THE REMAINDER OF THOSE SENATORS' TERMS IN IMPLEMENTING A REDISTRICTING PLAN; AND REPEALING SECTION 5-1-116, MCA	1235
358	(<i>Senate Bill No. 174; Kitzenberg</i>) REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE AN EXAMINER TO ADMINISTER MOTOR VEHICLE DRIVER'S LICENSE EXAMINATIONS THAT ARE PREVIOUSLY SCHEDULED; AND AMENDING SECTION 61-5-101, MCA.	1235
359	(<i>Senate Bill No. 182; Gillan</i>) PROVIDING THAT AN ABSENTEE BALLOT CAST AND RETURNED BY AN ELECTOR WHO DIES BEFORE ELECTION DAY MUST BE COUNTED; AND AMENDING SECTIONS 13-13-204 AND 13-13-243, MCA.	1236
360	(<i>Senate Bill No. 207; Perry</i>) REQUIRING AS A CONDITION OF SENTENCE THAT SEXUAL OFFENDERS DESIGNATED AS LEVEL 3 OFFENDERS PARTICIPATE IN A PROGRAM FOR CONTINUOUS, SATELLITE-BASED MONITORING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ESTABLISH A PROGRAM FOR THE	

	CONTINUOUS SATELLITE-BASED MONITORING OF LEVEL 3 SEXUAL OFFENDERS; REQUIRING PROGRESS REPORTS; AMENDING SECTION 46-23-1031, MCA; AND PROVIDING AN EFFECTIVE DATE	1237
361	(<i>Senate Bill No. 208; Perry</i>) INCREASING FROM \$25 TO \$50 THE CHARGE IMPOSED UPON CONVICTION OF A MISDEMEANOR OR FELONY UNDER TITLE 45, 61-8-401, OR 61-8-406 AND USED TO FUND CRIME VICTIM AND WITNESS ADVOCATE PROGRAMS; AND AMENDING SECTION 46-18-236, MCA	1240
362	(<i>Senate Bill No. 304; Kitzenberg</i>) ESTABLISHING THE RAWHIDE STAMPEDE RUSTLERS AND RENDEZVOUS TRADE CORRIDOR ALONG STATE HIGHWAY 16 BETWEEN GLENDIVE AND THE PORT OF RAYMOND	1241
363	(<i>Senate Bill No. 311; Grimes</i>) REGULATING THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE; PROVIDING THE PURPOSE, SCOPE, AND DEFINITIONS FOR THE ACT; ESTABLISHING CRITERIA FOR THE USE OF CREDIT INFORMATION IN INSURANCE UNDERWRITING; LISTING CONDITIONS FOR UNDERWRITING OR RATING EXCEPTIONS; PROVIDING FOR DISPUTE RESOLUTION AND ERROR CORRECTION; PROVIDING FOR NOTICE TO CONSUMERS OF THE USE OF CREDIT INFORMATION AND ADVERSE ACTION BASED ON THE USE OF CREDIT INFORMATION; REQUIRING INSURERS TO FILE THEIR CREDIT SCORING MODELS WITH THE COMMISSIONER OF INSURANCE; PROVIDING FOR THE INDEMNIFICATION OF INSURANCE PRODUCERS USING SCORING INFORMATION; PROHIBITING CONSUMER REPORTING AGENCIES FROM PROVIDING OR SELLING CERTAIN DATA PERTAINING TO A CONSUMER'S CREDIT; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE	1242
364	(<i>Senate Bill No. 381; Moss</i>) DEFINING "CHILD" OR "CHILDREN" FOR PURPOSES OF THE CRIMINAL LAWS; REVISING THE OFFENSE OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT THE LURING OF CHILDREN TO ENGAGE IN ANY SEXUAL CONDUCT AND NOT JUST FOR PURPOSES OF CHILD PORNOGRAPHY IS A CRIME; AND AMENDING SECTIONS 45-2-101 AND 45-5-625, MCA.	1249
365	(<i>Senate Bill No. 440; Harrington</i>) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE SPECIALTY HOSPITALS; PROVIDING A DEFINITION; PROVIDING REQUIREMENTS FOR LICENSURE; ENACTING A MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS UNTIL JUNE 1, 2007; AMENDING SECTION 50-5-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.	1258
366	(<i>Senate Bill No. 459; Tropila</i>) TRANSFERRING THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; ASSIGNING RESPONSIBILITY FOR THE ADOPTION OF MOTOR CARRIER SAFETY STANDARDS AND PRIMARY RESPONSIBILITY FOR MOTOR CARRIER INSPECTION TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THE MONTANA HIGHWAY PATROL TO COORDINATE WITH THE DEPARTMENT OF TRANSPORTATION FOR MOTOR CARRIER SAFETY AND ENFORCEMENT OF CERTAIN LAWS; AND AMENDING SECTIONS 15-70-233, 15-70-357, 19-8-101, 44-1-1005, 44-4-301, 44-4-302, 61-9-512, 61-10-141, 61-12-205, 61-12-206, 61-12-208, AND 76-13-601, MCA	1264

367	(<i>Senate Bill No. 500; Cobb</i>) GENERALLY REVISING ELECTION LAWS TO FACILITATE VOTING BY DISABLED ELECTORS; PROVIDING THAT A DISABLED ELECTOR MAY USE A FINGERPRINT OR IDENTIFYING MARK INSTEAD OF A SIGNATURE; PROVIDING THAT A DISABLED ELECTOR MAY DESIGNATE ANOTHER PERSON AS THE ELECTOR'S AGENT; PROVIDING THAT AN ELECTION ADMINISTRATOR OR ELECTION JUDGE MAY SIGN FOR A DISABLED ELECTOR; DIRECTING THE SECRETARY OF STATE TO ADOPT RULES; REQUIRING NEW POLLING PLACES TO CONFORM TO THE ACCESSIBILITY STANDARDS UNDER THE AMERICANS WITH DISABILITIES ACT; REQUIRING ELECTION JUDGES TO ASK A DISABLED ELECTOR ENTERING A POLLING PLACE IF ASSISTANCE IS DESIRED; AND AMENDING SECTIONS 13-3-205, 13-13-114, 13-13-119, AND 13-13-213, MCA	1277
368	(<i>House Bill No. 71; Lake</i>) PROVIDING THAT AN INDIVIDUAL WHO IS SEEKING LICENSURE AS A MORTGAGE BROKER AND WHO IS THE SOLE OWNER OF AN ENTITY SEEKING LICENSURE AS A MORTGAGE BROKER SHALL PAY A SINGLE LICENSE APPLICATION FEE AND A SINGLE LICENSE RENEWAL FEE; CLARIFYING THAT A DESIGNATED MANAGER MUST BE AN INDIVIDUAL LICENSED AS A MORTGAGE BROKER; AMENDING SECTIONS 32-9-117 AND 32-9-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1280
369	(<i>House Bill No. 587; Bergren</i>) PROVIDING THAT BENEFITS UNDER THE HIGHWAY PATROL OFFICERS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' RETIREMENT SYSTEMS THAT ARE PAYABLE TO A DEPENDENT CHILD MUST BE PAID TO A TRUST IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1281
370	(<i>Senate Bill No. 384; Gebhardt</i>) CLARIFYING THE AUTHORITY OF THE SECRETARY OF STATE TO ADOPT RULES FOR THE EFFECTIVE ADMINISTRATION OF THE SECRETARY OF STATE'S DUTIES RELATING TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-306 AND 2-15-401, MCA	1282
371	(<i>Senate Bill No. 525; Tester</i>) ESTABLISHING A QUALITY SCHOOLS INTERIM COMMITTEE TO ASSESS THE EDUCATIONAL NEEDS OF MONTANA'S CHILDREN, DETERMINE THE COSTS OF A BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, DETERMINE THE STATE'S SHARE OF THE COSTS, AND CONSTRUCT A FUNDING FORMULA THAT EQUITABLY DISTRIBUTES THE STATE'S SHARE OF THE COSTS OF THE BASIC SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1284
372	(<i>Senate Bill No. 2; Laible</i>) RECOGNIZING THE AUTHORITY OF STATE AGENCIES AND UNITS OF LOCAL GOVERNMENT TO DISPLAY THE NATIONAL MOTTO AND OTHER HISTORICAL DOCUMENTS IN OR ON PUBLIC BUILDINGS OR ON STATE LAND; PROHIBITING THE CENSORSHIP OF AMERICAN HISTORY OR HERITAGE BASED ON RELIGIOUS REFERENCES IN WRITINGS, DOCUMENTS, OR RECORDS; PROHIBITING THE SELECTION OF WRITINGS, DOCUMENTS, OR MATERIAL FOR DISPLAY IN ORDER TO ADVANCE A PARTICULAR RELIGIOUS, PARTISAN, OR SECTARIAN PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1286
373	(<i>Senate Bill No. 18; Wheat</i>) PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 18TH JUDICIAL DISTRICT; PROVIDING FOR PROVISIONAL APPOINTMENT TO THE POSITION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1287

- 374 (*Senate Bill No. 58; Barkus*) REVISING STATUTES GOVERNING PUBLIC BOND ISSUES FOR THE PURPOSE OF ELIMINATING OBSOLETE PROVISIONS AND PROVIDING ADDITIONAL FLEXIBILITY; REPEALING SPECIAL PROVISIONS GOVERNING LONG-RANGE BUILDING PROGRAM BONDS AND EMPLOYMENT SECURITY BUILDING BONDS; AMENDING SECTIONS 17-5-302, 17-5-304, 17-5-802, 17-5-803, 17-5-805, AND 18-2-101, MCA; REPEALING SECTIONS 17-5-401, 17-5-402, 17-5-403, 17-5-404, 17-5-407, 17-5-408, 17-5-409, 17-5-410, 17-5-411, 17-5-412, 17-5-413, 17-5-414, 17-5-415, 17-5-416, 17-5-417, 17-5-421, 17-5-423, 17-5-424, 17-5-425, 17-5-426, 17-5-430, 17-5-431, 17-5-432, 17-5-433, 17-5-601, 17-5-602, 17-5-603, 17-5-604, 17-5-605, 17-5-606, 17-5-607, 17-5-608, 17-5-609, 17-5-610, 17-5-611, 17-5-612, 17-5-613, 17-5-614, 17-5-615, 17-5-616, 17-5-617, 17-5-618, 17-5-619, AND 17-5-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1288
- 375 (*Senate Bill No. 70; Cocchiarella*) REVISING THE NOTICE REQUIREMENTS IN AN ACTION TO QUIET TITLE TO A TAX DEED; REQUIRING THAT NOTICE BE GIVEN TO ALL TRUE OWNERS WHOSE NAMES AND ADDRESSES ARE REASONABLY ASCERTAINABLE; AND AMENDING SECTION 15-18-411, MCA . . . 1292
- 376 (*Senate Bill No. 74; Story*) PROVIDING THAT CERTAIN LAND THAT IS NOT ELIGIBLE FOR VALUATION, ASSESSMENT, AND TAXATION AS AGRICULTURAL LAND IS CONSIDERED TO BE NONQUALIFIED AGRICULTURAL LAND; PROVIDING THAT LAND WITH COVENANTS OR OTHER RESTRICTIONS THAT PROHIBIT AGRICULTURAL USE MAY NOT BE CLASSIFIED OR VALUED AS NONQUALIFIED AGRICULTURAL LAND; AMENDING SECTIONS 15-6-133, 15-7-202, AND 15-10-420, MCA; AND PROVIDING AN APPLICABILITY DATE . . 1293
- 377 (*Senate Bill No. 82; Cobb*) REVISING THE DEFINITION OF "INTERMEDIATE CARE FACILITY" FOR PURPOSES OF THE UTILIZATION FEE ON RESIDENT BED DAYS; INCREASING THE UTILIZATION FEE FROM 5 PERCENT TO 6 PERCENT; AMENDING SECTIONS 15-67-101 AND 15-67-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1298
- 378 (*Senate Bill No. 91; Smith*) ALLOCATING TWO SPECIAL WILD BUFFALO LICENSES ANNUALLY TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES FREE OF CHARGE; PROVIDING THAT WILD BUFFALO TAKEN PURSUANT TO THE SPECIAL LICENSES BE HUNTED AND USED IN THE MANNER TRADITIONAL TO EACH TRIBE; DESIGNATING THE TERMS AND CONDITIONS OF THE SPECIAL TRIBAL LICENSES; PROVIDING THAT ANY ADDITIONAL WILD BUFFALO LICENSES BE MADE AVAILABLE FOR PUBLIC HUNTING TO BE USED AND SOLD COINCIDENT WITH THE ISSUANCE AND USE OF SPECIAL WILD BUFFALO LICENSES ANNUALLY OFFERED TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1299
- 379 (*Senate Bill No. 92; Toole*) CLARIFYING THE METHOD OF APPRAISING RESIDENTIAL AND COMMERCIAL CONDOMINIUM PROPERTY FOR PROPERTY TAX PURPOSES; AMENDING SECTIONS 15-8-111, 15-8-511, AND 15-8-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1301
- 380 (*Senate Bill No. 93; Cobb*) REQUIRING THAT MONTHLY AND FISCAL YEAREND REPORTS CONCERNING THE COST OF MEDICAID SERVICES AND THE DEPARTMENTAL BUDGET BE PROVIDED TO

	THE LEGISLATIVE FINANCE COMMITTEE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; DELETING EXISTING REQUIREMENTS CONCERNING MEDICAID REPORTS; AMENDING SECTION 53-6-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1304
381	(<i>Senate Bill No. 118; Wheat</i>) ESTABLISHING THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT; PROVIDING DEFINITIONS; PROHIBITING EMPLOYMENT DISCRIMINATION BASED ON MEMBERSHIP IN THE STATE'S ORGANIZED MILITIA; CLARIFYING AND UPDATING PROVISIONS AUTHORIZING LEAVES OF ABSENCE FOR ORGANIZED MILITIA MEMBERS AND THE RIGHT OF MEMBERS TO RETURN TO EMPLOYMENT WITHOUT LOSS OF SPECIFIED BENEFITS; CLARIFYING AND UPDATING MILITARY LEAVE PROVISIONS FOR ELECTED OFFICIALS; PROVIDING FOR ENFORCEMENT BY SPECIFYING COMPLAINT PROCEDURES, INFORMAL RESOLUTION, AND COURT REMEDIES; SPECIFYING THE DUTIES AND POWERS OF THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE STATE ATTORNEY GENERAL WITH RESPECT TO COMPLAINTS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO PAID MILITARY LEAVE FOR PUBLIC EMPLOYEES; UPDATING MILITARY LEAVE PROVISIONS RELATED TO DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 2-16-112, 2-16-501, 7-4-2208, 10-1-604, 10-1-615, 19-2-707, 39-51-1214, AND 39-51-2302, MCA; REPEALING SECTIONS 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226, 10-2-227, AND 10-2-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1305
382	(<i>Senate Bill No. 119; Schmidt</i>) REVISING CHILD PROTECTIVE SERVICES AND ADOPTION STATUTES IN COMPLIANCE WITH FEDERAL REGULATIONS AND AN ATTORNEY GENERAL'S OPINION; CLARIFYING WHO MAY BE APPOINTED AS A GUARDIAN AD LITEM; AUTHORIZING A FOSTER CARE REVIEW COMMITTEE OR A CITIZEN REVIEW BOARD TO CONDUCT A PERMANENCY HEARING SUBJECT TO APPROVAL BY THE COURT AND ABSENT OBJECTION BY A PARTY TO THE PROCEEDING; AMENDING SECTIONS 41-3-112, 41-3-115, 41-3-201, 41-3-202, 41-3-438, 41-3-443, 41-3-445, 41-3-1010, AND 42-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1314
383	(<i>Senate Bill No. 121; Keenan</i>) REMOVING THE RESTRICTION ON LIABILITY OF RESIDENTS OF MONTANA STATE HOSPITAL AND CERTAIN OTHER STATE INSTITUTIONS TO PAY FOR CARE PROVIDED TO THE RESIDENTS UNDER ANY PROVISION OF A CRIMINAL STATUTE; AMENDING SECTION 53-1-409, MCA; AND PROVIDING AN EFFECTIVE DATE.	1328
384	(<i>Senate Bill No. 123; Black</i>) REVISING REQUIREMENTS GOVERNING SPECIAL FUEL PERMITHOLDERS AND SPECIAL FUEL USERS; REQUIRING THAT SPECIAL FUEL PERMITHOLDERS USE FUEL ON WHICH STATE TAX HAS BEEN PAID; REQUIRING THAT MATERIAL USED FOR CONSTRUCTION, RECONSTRUCTION, OR IMPROVEMENT IN CONNECTION WITH WORK PERFORMED UNDER A PUBLIC CONTRACT BE PRODUCED USING SPECIAL FUEL ON WHICH STATE FUEL TAX HAS BEEN PAID; EXEMPTING SPECIAL FUEL PERMITHOLDERS FROM CERTAIN RECORDKEEPING REQUIREMENTS; INCREASING THE CIVIL PENALTIES FOR USING DYED SPECIAL FUEL ON THE PUBLIC ROADS AND HIGHWAYS; ELIMINATING THE MISDEMEANOR	

	PENALTY FOR USING DYED FUEL; AND AMENDING SECTIONS 15-70-302, 15-70-321, 15-70-323, 15-70-325, 15-70-330, 15-70-356, AND 15-70-372, MCA	1328
385	(<i>Senate Bill No. 131; Black</i>) PROHIBITING THE IMPORTATION, SALE, OFFERING FOR SALE, AND DISPENSING OF GASOLINE CONTAINING METHYL TERTIARY BUTYL ETHER IN AMOUNTS THAT EXCEED ALLOWABLE TRACE LEVELS; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AUTHORIZING ADMINISTRATIVE PENALTIES AND INJUNCTIONS; AMENDING SECTIONS 82-15-102, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.	1333
386	(<i>Senate Bill No. 137; Lewis</i>) PROVIDING FOR THE LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; GRANTING RULEMAKING AUTHORITY REGARDING STANDARDS FOR SANITATION AND SAFETY, LICENSING, ENFORCEMENT PROCEDURES, AND FEES; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF TATTOOING AND BODY-PIERCING LAWS; PROVIDING FOR THE DENIAL AND CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY HEALTH AUTHORITIES; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR THE DEPARTMENT TO USE IN ADMINISTERING THE LAWS; AMENDING SECTIONS 45-5-623, 50-1-202, 50-2-116, AND 50-2-130, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1336
387	(<i>Senate Bill No. 138; Weinberg</i>) REVISING LAWS RELATED TO THE FLATHEAD BASIN COMMISSION; INCREASING THE NUMBER OF COMMISSION MEMBERS; MAKING PERMANENT THE ATTACHMENT OF THE FLATHEAD BASIN COMMISSION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-3330, MCA; REPEALING SECTION 4, CHAPTER 537, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1344
388	(<i>Senate Bill No. 164; Gillan</i>) DESIGNATING MAIN STREET IN BILLINGS AS THE RICHARD DEAN ROEBLING MEMORIAL HIGHWAY; AND DIRECTING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS RECOGNIZING THE DESIGNATION	1345
389	(<i>Senate Bill No. 183; Laible</i>) CLARIFYING THE DUTIES OF REAL ESTATE BROKERS OR SALESPERSONS ACTING AS PROPERTY MANAGERS; REQUIRING COMPLIANCE WITH PROPERTY MANAGEMENT STATUTES AND RULES; REQUIRING DISCLOSURE NOTICE; PROVIDING FOR LICENSE REVOCATION OR SUSPENSION FOR FAILURE TO COMPLY WITH PROPERTY MANAGEMENT STATUTES, RULES, AND DISCLOSURE REQUIREMENTS; PROVIDING AN EXEMPTION FROM BEING LICENSED AS A PROPERTY MANAGER; AND AMENDING SECTIONS 37-51-313, 37-51-314, 37-51-321, AND 37-51-602, MCA	1346
390	(<i>Senate Bill No. 196; Wheat</i>) ADOPTING THE "GUS BARBER ANTISECRECY ACT"; PROHIBITING A FINAL ORDER OR JUDGMENT	

	OR WRITTEN FINAL SETTLEMENT AGREEMENT THAT CONCEALS A PUBLIC HAZARD; PROVIDING CERTAIN EXCEPTIONS; PROHIBITING AGREEMENTS OR CONTRACTS THAT CONCEAL INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	1354
391	(<i>Senate Bill No. 197; Gebhardt</i>) REVISING PENSION BENEFITS FOR VOLUNTEER FIREFIGHTERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; ALLOWING CERTAIN MEMBERS TO RETURN TO VOLUNTEER SERVICE WITHOUT LOSS OF BENEFITS; CLARIFYING THE CALCULATION OF BENEFITS AFTER 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1355
392	(<i>Senate Bill No. 231; Laslovich</i>) REVISING LAWS RELATED TO JUDGMENTS AND THE COLLECTION OF JUDGMENTS; PROVIDING THAT DISHONORED OR FRAUDULENT PAYMENTS OF PROPERTY TAXES ARE SUBJECT TO THE PENALTIES FOR OTHER DISHONORED OR FRAUDULENT PAYMENTS; CLARIFYING THAT A REGISTERED PROCESS SERVER MAY MAKE SERVICE OF PROCESS IN ANY COUNTY IN THIS STATE; REVISING THE PROCEDURE FOR RETURNING A SUMMONS, PROCESS, OR ORDER; PROVIDING THAT INTEREST ON JUDGMENTS ALSO APPLIES TO THE COST OF OBTAINING OR ENFORCING A JUDGMENT; PROVIDING THAT SERVICE OF PROCESS MAY BE MAILED OUT OF STATE, AT THE DIRECTION OF A THIRD PARTY, IF THE THIRD PARTY PROCESSES GARNISHMENTS OR LEVIES FROM A LOCATION OUTSIDE THE STATE; PROVIDING THAT THE STATUTE OF LIMITATIONS FOR THE LIABILITY FOR ISSUING A DISHONORED PAYMENT IS 6 YEARS FROM THE DATE OF THE DEMAND FOR PAYMENT OF A SERVICE CHARGE; CLARIFYING THAT AN OBLIGATION IS TRANSFERABLE PROPERTY AND PROVIDING FOR THE DISCHARGE OF A TRANSFERRED OBLIGATION; AND AMENDING SECTIONS 15-16-403, 25-1-1101, 25-3-301, 25-9-205, 25-13-402, 27-1-717, AND 28-1-1001, MCA	1356
393	(<i>Senate Bill No. 245; Elliott</i>) REVISING RESORT AREA DISTRICT BOARD ELECTION LAWS; PROVIDING A PROCESS FOR EXTENDING AN EXISTING RESORT AREA DISTRICT; PROVIDING FOR DIRECT APPOINTMENT OF A BOARD MEMBER IF NO CANDIDATE HAS FILED A NOMINATION PETITION AND REQUIRING SUBSEQUENT ELECTION OF THAT BOARD MEMBER; REQUIRING A SUBSEQUENT ELECTION OF A BOARD MEMBER APPOINTED TO FILL A VACANCY; AND AMENDING SECTIONS 7-6-1541, 7-6-1544, AND 7-6-1546, MCA.	1361
394	(<i>Senate Bill No. 248; Balyeat</i>) REVISING THE PENALTY FOR DRIVING WITHOUT MANDATORY MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING THAT FOR A SECOND OR SUBSEQUENT OFFENSE, UPON PRESENTING PROOF OF INSURANCE, A DRIVER MUST BE ISSUED A RESTRICTED REGISTRATION RECEIPT THAT ALLOWS THE MOTOR VEHICLE INVOLVED IN THE OFFENSE TO BE OPERATED ONLY FOR EMPLOYMENT PURPOSES; AMENDING SECTION 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.	1362
395	(<i>Senate Bill No. 259; Lewis</i>) PROVIDING THAT TRANSFER OF PROPERTY TO NONFEDERAL PUBLIC OWNERSHIP REQUIRES AN INSPECTION TO DETERMINE IF NOXIOUS WEEDS ARE PRESENT; REQUIRING THE INSPECTION INFORMATION BE SUBMITTED TO THE PURCHASER OR GRANTEE; REQUIRING THE ENTITIES TO DEVELOP A WEED MANAGEMENT AGREEMENT; REQUIRING THE	

	WEED MANAGEMENT AGREEMENT TO BE PART OF THE PURCHASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE	1363
396	(<i>Senate Bill No. 275; Schmidt</i>) RELATING TO THE VOLUNTARY GENETICS PROGRAM; CHANGING THE NAME OF THE PROGRAM TO THE GENETICS PROGRAM; TEMPORARILY INCREASING THE GENETICS PROGRAM FEE; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR DEPOSIT OF THE FEE; AND AMENDING SECTIONS 33-2-712 AND 50-19-211, MCA	1364
397	(<i>Senate Bill No. 277; Steinbeisser</i>) ESTABLISHING A SPECIAL FUEL USER'S AGRICULTURAL PRODUCT TEMPORARY TRIP PERMIT FOR A PERSON OPERATING A SPECIAL FUEL-POWERED VEHICLE OVER 26,000 POUNDS GROSS VEHICLE WEIGHT OR REGISTERED GROSS VEHICLE WEIGHT IN THE MOVEMENT OF THAT PERSON'S AGRICULTURAL PRODUCTS UPON THE PUBLIC ROADS AND HIGHWAYS OF THIS STATE; PROVIDING TERMS AND FEES FOR AGRICULTURAL PRODUCT TEMPORARY TRIP PERMITS; AMENDING SECTIONS 15-70-311 AND 15-70-312, MCA; AND PROVIDING AN EFFECTIVE DATE.	1365
398	(<i>Senate Bill No. 279; Moss</i>) ALLOWING A MUNICIPALITY TO PROVIDE THAT A VIOLATION OF A CRIMINAL OFFENSE UNDER STATE LAW THAT IS PUNISHABLE ONLY BY A FINE IS A MUNICIPAL INFRACTION; AND AMENDING SECTION 7-1-4150, MCA	1367
399	(<i>Senate Bill No. 288; Cooney</i>) SPECIFYING THE CONDITIONS UNDER WHICH THE LOANS TO STATE AGENCIES MAY BE MADE UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1368
400	(<i>Senate Bill No. 289; Laible</i>) PROVIDING THAT A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS MAY NOT IMPOSE A LICENSE FEE OR LICENSE TAX ON A REAL ESTATE BROKER OR SALESPERSON; AND AMENDING SECTION 37-51-312, MCA.	1368
401	(<i>Senate Bill No. 294; Hawks</i>) EXTENDING THE TIME FOR PROTESTS INVOLVING SPECIAL IMPROVEMENT DISTRICT PROJECTS IF THE NORMAL PROTEST PERIOD INCLUDES A HOLIDAY OTHER THAN A SUNDAY; AMENDING SECTIONS 7-12-2109, 7-12-4110, AND 7-12-4114, MCA; AND PROVIDING AN EFFECTIVE DATE	1369
402	(<i>Senate Bill No. 314; Larson</i>) REVISING COMMISSIONER QUALIFICATIONS FOR IRRIGATION DISTRICTS; DEFINING THE TERM "ENTITY"; AMENDING SECTION 85-7-1501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1370
403	(<i>Senate Bill No. 320; Bales</i>) PROVIDING FOR THE REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS UNDER GENERAL PERMIT AUTHORIZATIONS; DEFINING THE TERMS "ANIMAL FEEDING OPERATION", "CONCENTRATED ANIMAL FEEDING OPERATION", "LARGE CONCENTRATED ANIMAL FEEDING OPERATION", AND "MEDIUM CONCENTRATED ANIMAL FEEDING OPERATION"; PROVIDING FEES FOR PERMITTING CONCENTRATED ANIMAL FEEDING OPERATIONS; PROVIDING FOR THE LEVEL OF ENVIRONMENTAL REVIEW OF CONCENTRATED ANIMAL FEEDING OPERATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1371
404	(<i>Senate Bill No. 328; Squires</i>) PROVIDING FOR A TASK FORCE IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO	

	STUDY THE PREVALENCE AND CARE OF AND TO RAISE AWARENESS ON THE CAUSES AND NATURE OF CERVICAL CANCER; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	1374
405	(<i>Senate Bill No. 333; Smith</i>) CLARIFYING A SCHOOL DISTRICT'S USE OF ITS RETIREMENT FUND TO PAY FOR BENEFITS FOR SCHOOL DISTRICT OR COOPERATIVE EMPLOYEES; REQUIRING A SCHOOL DISTRICT TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A DISTRICT EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE DISTRICT'S IMPACT AID FUND; REQUIRING A COOPERATIVE TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A COOPERATIVE EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE MISCELLANEOUS PROGRAMS FUND WITH MONEY RECEIVED FROM THE MEDICAID PROGRAM; AMENDING SECTION 20-9-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1375
406	(<i>Senate Bill No. 358; Keenan</i>) TO ALLOW IMPLEMENTATION OF LONG-TERM CARE PARTNERSHIPS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS ALLOWED BY FEDERAL LAW OR WAIVER; AMENDING SECTION 53-6-803, MCA; AND REPEALING SECTION 8, CHAPTER 195, LAWS OF 1997.	1378
407	(<i>Senate Bill No. 388; Keenan</i>) PROVIDING THAT INSURANCE COMPANIES THAT HAVE DIRECT REPAIR PROGRAMS WITH AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MAY NOT LIMIT THE NUMBER OF AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS WITH WHOM THEY HAVE DIRECT REPAIR PROGRAMS AS LONG AS THE AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MEET CERTAIN CRITERIA; PROVIDING THAT A VIOLATION IS SUBJECT TO CEASE AND DESIST ORDERS OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-18-224 AND 33-18-1006, MCA	1378
408	(<i>Senate Bill No. 406; Shockley</i>) INCREASING THE SURCHARGE FOR FILING A PETITION FOR DISSOLUTION OF MARRIAGE BY \$10 AND ALLOCATING THE INCREASE TO FUND CIVIL LEGAL ASSISTANCE FOR INDIGENT VICTIMS OF DOMESTIC VIOLENCE; AND AMENDING SECTIONS 3-2-714 AND 25-1-201, MCA	1381
409	(<i>Senate Bill No. 434; Lewis</i>) REVISING THE FORM FILING AND APPROVAL PROVISIONS OF THE INSURANCE CODE; PROVIDING REQUIREMENTS FOR CERTIFICATION AND DELIVERY; ALLOWING A FORM THAT IS NOT DISAPPROVED BY THE COMMISSIONER OF INSURANCE WITHIN 60 DAYS TO BE CONSIDERED APPROVED; PROVIDING REQUIREMENTS FOR INSURERS REGARDING NOTIFICATION OF FORM USE; PROVIDING REQUIREMENTS FOR THE COMMISSIONER REGARDING DISAPPROVALS OR WITHDRAWALS OF APPROVAL; PROVIDING THAT THE FORM FILING AND APPROVAL PROCESS FOR HEALTH MAINTENANCE ORGANIZATIONS AND FORMS ARE SUBJECT TO THE SAME REQUIREMENTS AS FOR INSURERS GENERALLY; AMENDING SECTIONS 33-1-501 AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1383
410	(<i>Senate Bill No. 435; Wheat</i>) PROVIDING FOR PROBATE OF A NONDOMICILIARY DECEDENT'S WILL THAT IS FILED AND NOT PROBATED IN A COURT IN THE DOMICILIARY STATE; AMENDING	

MONTANA SESSION LAWS 2005

lxii

	SECTIONS 72-3-203, 72-3-212, AND 72-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1391
411	(<i>Senate Bill No. 452; Perry</i>) AUTHORIZING A JUDGE TO ISSUE A STANDING NO CONTACT ORDER AND TO DIRECT LAW ENFORCEMENT TO SERVE THE ORDER ON DEFENDANTS CHARGED WITH PARTNER OR FAMILY MEMBER ASSAULT; PROVIDING FOR ORAL AND WRITTEN NOTIFICATION OF THE ORDER TO THE DEFENDANT; PROVIDING THAT VIOLATION OF A NO CONTACT ORDER IS A MISDEMEANOR; AND AMENDING SECTIONS 46-6-311 AND 46-9-108, MCA	1393
412	(<i>Senate Bill No. 458; Gillan</i>) PROVIDING THAT THE PERIOD FOR THE COMMENCEMENT OF AN ACTION AGAINST A MUNICIPALITY ARISING FROM A DECISION OF THE MUNICIPALITY RELATING TO A LAND USE CONSTRUCTION OR DEVELOPMENT PROJECT IS 6 MONTHS FROM THE DATE OF THE WRITTEN DECISION; AND AMENDING SECTION 27-2-209, MCA.	1396
413	(<i>Senate Bill No. 466; Esp</i>) PROVIDING FOR THE FORCED RECONVEYANCE OF TRUST INDENTURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING DEFINITIONS; PROVIDING NOTICE AND RECONVEYANCE FORMS; PROVIDING FOR THE RECOVERY OF COSTS BY TITLE INSURERS AND TITLE INSURANCE PRODUCERS WHEN BENEFICIARIES OR SERVICERS FAIL TO RECONVEY UPON THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE; AMENDING SECTIONS 71-1-303 AND 71-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE	1397
414	(<i>Senate Bill No. 472; Perry</i>) ALLOWING COUNTY COMMISSIONERS TO DESIGNATE PUBLIC PROJECTS FOR PURPOSES OF COUNTY JAIL WORK PROGRAMS; ALLOWING 2 DAYS' CREDIT AGAINST INCARCERATION FOR EACH DAY'S PARTICIPATION IN A COUNTY JAIL WORK PROGRAM; AMENDING SECTION 7-32-2226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1401
415	(<i>Senate Bill No. 480; Cromley</i>) ELIMINATING THE COAL SEVERANCE TAX RATE INCENTIVE FOR IN-STATE ELECTRICAL PRODUCTION; AMENDING SECTION 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1402
416	(<i>Senate Bill No. 481; Cocchiarella</i>) MERGING OCCUPATIONAL DISEASES INTO THE WORKERS' COMPENSATION ACT; ESTABLISHING LEGISLATIVE INTENT TOWARD OCCUPATIONAL DISEASES AS PUBLIC POLICY; DEFINING "OCCUPATIONAL DISEASE"; PROVIDING FOR THE LIABILITY OF INSURERS AND COMPENSATION FOR OCCUPATIONAL DISEASES UNDER THE WORKERS' COMPENSATION ACT; PROVIDING FOR TIME FOR CLAIMS TO BE PRESENTED; AMENDING SECTIONS 2-15-2015, 30-9A-109, 37-1-131, 39-71-105, 39-71-106, 39-71-107, 39-71-116, 39-71-201, 39-71-206, 39-71-211, 39-71-315, 39-71-316, 39-71-317, 39-71-403, 39-71-407, 39-71-416, 39-71-525, 39-71-601, 39-71-603, 39-71-612, 39-71-743, 39-71-915, 39-71-1105, 39-71-2401, 39-71-2406, 39-71-2408, 39-71-2411, 39-73-104, 39-73-107, 45-6-301, 71-3-1118, AND 85-5-101, MCA; REPEALING SECTIONS 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709,	

	39-72-711, 39-72-712, AND 39-72-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	1404
417	(<i>Senate Bill No. 487; Pease</i>) REVISING LAWS ON SCHOOL BUS SAFETY; INCREASING THE FOOTAGE REQUIREMENT IN WHICH A MOTOR VEHICLE MUST STOP BEFORE REACHING A SCHOOL BUS WHEN BUS LIGHTS ARE FLASHING; PROVIDING THAT A PERSON WHO OBSERVES A VIOLATION MAY PREPARE A VIOLATION REPORT; AMENDING SECTIONS 61-8-351 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1433
418	(<i>Senate Bill No. 498; Black</i>) INCREASING THE LIMIT TO \$400,000 FOR A LOAN TO A PRIVATE PERSON THAT IS NOT A WATER USERS' ASSOCIATION OR DITCH COMPANY AND \$3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; AMENDING SECTION 85-1-613, MCA; AND PROVIDING A TERMINATION DATE.	1435
419	(<i>Senate Bill No. 503; Tropila</i>) ELIMINATING AUTHORIZATION FOR THE TETON-SPRING CREEK BIRD PRESERVE AND ITS SPECIAL ARCHERY SEASON; AND REPEALING SECTION 87-5-405, MCA . . .	1436
420	(<i>Senate Bill No. 504; Laible</i>) SPECIFYING THE USE OF THE ANNUAL ATTORNEY LICENSE TAX; AMENDING SECTION 37-61-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1436
421	(<i>House Bill No. 35; Jent</i>) PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR THE NUMBER OF HIGHWAY PATROL OFFICER POSITIONS EXISTING ON JUNE 30, 2006; PROVIDING FOR BIENNIAL SALARY INCREASES AFTER THAT DATE; PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR NEW HIGHWAY PATROL OFFICER POSITIONS CREATED AFTER THAT DATE; PROVIDING A FUNDING MECHANISM FOR THE INCREASES BY RAISING CERTAIN VEHICLE REGISTRATION FEES; EXEMPTING THE HIGHWAY PATROL FROM VACANCY SAVINGS; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-303, 17-7-502, AND 61-3-321, MCA; AND PROVIDING EFFECTIVE DATES	1437
422	(<i>Senate Bill No. 308; O'Neil</i>) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INFORM A PARENT OR OTHER PERSON RESPONSIBLE FOR A CHILD'S WELFARE OF THE RIGHT TO HAVE A SUPPORT PERSON PRESENT DURING AN IN-PERSON MEETING WITH A SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA	1449
423	(<i>Senate Bill No. 426; Stapleton</i>) GENERALLY REVISING LAWS PERTAINING TO CONFIDENTIALITY AND INFORMATION SHARING OF YOUTH COURT RECORDS TO PROTECT YOUTH; DEFINING FORMAL AND INFORMAL YOUTH COURT RECORDS; PROVIDING FOR ELECTRONIC TRANSFER OF INFORMATION BETWEEN YOUTH COURTS AND THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT APPROPRIATE CONTROL METHODS BE USED BY THE YOUTH COURT AND THE DEPARTMENT OF CORRECTIONS TO ENSURE ADEQUATE INTEGRITY, SECURITY, AND CONFIDENTIALITY OF ANY ELECTRONIC RECORDS; REQUIRING YOUTH COURT INFORMATION TO BE MAINTAINED SEPARATELY FROM ADULT RECORDS; PROVIDING A PENALTY FOR UNAUTHORIZED DISCLOSURE OF OR ACCESS TO RECORDS; AND AMENDING SECTIONS 41-5-103, 41-5-215, 41-5-216, 41-5-1524, AND 41-5-2510, MCA	1451

- 424 (*Senate Bill No. 186; Balyeat*) ALLOWING NONMONETARY, LOW-VALUE PRIZE CONTESTS BASED ON THE SIZE OF GAME ANIMALS TAKEN BY HUNTERS; AMENDING SECTION 87-3-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1461
- 425 (*Senate Bill No. 489; Lind*) AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR EVALUATING THE EXTENT OF CONTAMINATION AND FORMULATING REMEDIATION ALTERNATIVES FOR RELEASES AT CERTAIN FACILITIES UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE 1461
- 426 (*House Bill No. 46; Parker*) CREATING THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1468
- 427 (*House Bill No. 179; Lake*) REQUIRING THE SMALL BUSINESS LICENSING COORDINATION CENTER TO INFORM EACH BUSINESS ENTERPRISE APPLYING FOR A BUSINESS LICENSE THAT THE BUSINESS ENTERPRISE IS REQUIRED TO OBTAIN A BUSINESS NAME FROM THE SECRETARY OF STATE BEFORE ANY OTHER STATE LICENSE APPLICATION MAY BE PROCESSED; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PARTICIPATE IN THE MONTANA SMALL BUSINESS LICENSING COORDINATION PROGRAM AND ON THE BOARD OF REVIEW; AND AMENDING SECTIONS 30-16-201, 30-16-302, AND 30-16-303, MCA 1471
- 428 (*House Bill No. 192; Waitschies*) REVISING LAWS GOVERNING COMMERCIAL DRIVER'S LICENSES TO COMPLY WITH REGULATIONS ISSUED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION SECURITY ADMINISTRATION OF THE DEPARTMENT OF HOMELAND SECURITY; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING, TRANSFERRING, OR RENEWING A HAZARDOUS MATERIALS ENDORSEMENT UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING A SEPARATE APPLICATION AND FINGERPRINT-BASED BACKGROUND CHECK FOR A HAZARDOUS MATERIALS ENDORSEMENT; REQUIRING REVOCATION OR REMOVAL OF A PERSON'S HAZARDOUS MATERIALS ENDORSEMENT TO A COMMERCIAL DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING A PERSON WHOSE HAZARDOUS MATERIALS ENDORSEMENT IS REVOKED TO SURRENDER THE PERSON'S COMMERCIAL DRIVER'S LICENSE AND OBTAIN A REPLACEMENT LICENSE WITHOUT THE ENDORSEMENT; REQUIRING THE DEPARTMENT TO KEEP RECORDS OF REVOCATIONS AND DISQUALIFICATIONS; PROHIBITING AN EMPLOYER FROM PERMITTING THE OPERATION OF A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF STATE LAW OR FEDERAL REGULATION AND PROVIDING PENALTIES; SPECIFYING WHEN SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE OR DISQUALIFICATION COMMENCES; REQUIRING THE

	DEPARTMENT TO NOTIFY OTHER STATES OF TRAFFIC VIOLATIONS; SPECIFYING THAT A VEHICLE USED FOR MILITARY PURPOSES IS NOT A COMMERCIAL MOTOR VEHICLE; REVISING THE DEFINITION OF "HAZARDOUS MATERIALS"; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY ISSUE A COMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; PROHIBITING THE DEPARTMENT FROM ISSUING A NONCOMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY RENEW A DRIVER'S LICENSE BY MAIL; PROVIDING SEPARATE EXPIRATION PROVISIONS FOR COMMERCIAL DRIVER'S LICENSES; REVISING THE PENALTIES FOR OPERATION OF AN OUT-OF-SERVICE VEHICLE; REQUIRING THAT CERTAIN VIOLATIONS APPEAR ON THE DRIVING RECORD OF A PERSON WHO HOLDS A COMMERCIAL DRIVER'S LICENSE; AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404, 44-1-1005, 61-1-134, 61-1-137, 61-1-505, 61-5-103, 61-5-104, 61-5-105, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-114, 61-5-119, 61-5-121, 61-5-125, 61-5-201, 61-5-213, 61-8-725, 61-8-802, 61-8-803, 61-8-807, 61-8-812, 61-11-101, 61-11-102, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.	1474
429	(<i>House Bill No. 197; Jayne</i>) AMENDING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; MAKING IT A FELONY TO PURPOSELY OR KNOWINGLY ABUSE, SEXUALLY ABUSE, OR NEGLECT AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; MAKING IT A MISDEMEANOR FOR A FIRST OFFENSE OF NEGLIGENTLY ABUSING AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; AND AMENDING SECTION 52-3-825, MCA.	1499
430	(<i>House Bill No. 208; Kaufmann</i>) AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, THROUGH ITS DIRECTOR, TO GRANT OR ACQUIRE RIGHTS-OF-WAY FOR CERTAIN PURPOSES WITHOUT THE APPROVAL OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE DEPARTMENT, WITH THE CONSENT OF THE COMMISSION, TO MAKE LIMITED PROPERTY BOUNDARY AND WATER RIGHTS ADJUSTMENTS WITH ADJACENT LANDOWNERS; AMENDING SECTIONS 87-1-209 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1500
431	(<i>House Bill No. 216; Caferro</i>) REVISING THE LAWS REGARDING THE CHILD SUPPORT ENFORCEMENT PROGRAM TO IMPROVE EFFICIENCY AND EFFECTIVENESS; CLARIFYING ACCESS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO A PARTY'S FINANCIAL AND EMPLOYMENT RECORDS; ALLOWING THE DEPARTMENT TO ESTABLISH A MEDICAL SUPPORT ORDER INDEPENDENTLY OF A CHILD SUPPORT ORDER; EXTENDING THE LIFE OF A WARRANT FOR DISTRRAINT FROM 90 DAYS TO 120 DAYS; ALLOWING AN AGREEMENT FOR SERVICE BY ELECTRONIC MEANS OF AN ORDER REQUIRING ENROLLMENT; PROVIDING PRIORITY FOR WITHHOLDING CHILD SUPPORT AND MEDICAL SUPPORT; ALLOWING ATTACHMENT OF CRIME VICTIMS COMPENSATION FOR THE PAYMENT OF MAINTENANCE OR CHILD SUPPORT; AMENDING SECTIONS 40-5-206, 40-5-208, 40-5-225, 40-5-226, 40-5-247, 40-5-412, 40-5-810, 40-5-812, 40-5-813, AND 53-9-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1503

- 432 (*House Bill No. 220; Lake*) REQUIRING LOCAL GOVERNMENTS TO USE ELECTRONIC FUNDS TRANSFERS IN MAKING PAYMENTS TO THE STATE IF SO REQUESTED BY THE STATE TREASURER OR A STATE AGENCY AND IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO CONDUCT ELECTRONIC FUNDS TRANSFERS; AUTHORIZING A STATE AGENCY OR THE STATE TREASURER TO MAKE PAYMENTS TO LOCAL GOVERNMENTS BY ELECTRONIC FUNDS TRANSFER IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO RECEIVE PAYMENTS BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTIONS 7-6-2601, 7-6-4501, AND 17-8-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1520
- 433 (*House Bill No. 230; Jacobson*) REQUIRING CERTIFIED NOTICE OF ADEQUATE STORM WATER DRAINAGE AND MUNICIPAL FACILITIES TO THE REVIEWING AUTHORITY PRIOR TO FINAL PLAT APPROVAL RATHER THAN WITHIN 20 DAYS AFTER PRELIMINARY PLAT APPROVAL; PROVIDING FOR CERTIFICATION THAT ADEQUATE MUNICIPAL FACILITIES FOR THE SUPPLY OF WATER AND DISPOSAL OF SEWAGE AND SOLID WASTE WILL BE PROVIDED; AND AMENDING SECTION 76-4-127, MCA 1521
- 434 (*House Bill No. 236; Jackson*) MAKING PERMANENT THE CLARK FORK RIVER BASIN TASK FORCE; PROVIDING DIRECTION ON TASK FORCE RESPONSIBILITIES IN THE FUTURE; AMENDING SECTION 85-2-350, MCA; REPEALING SECTION 6, CHAPTER 447, LAWS OF 2001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 1523
- 435 (*House Bill No. 250; Becker*) PROVIDING THAT A HEALTH CARE FACILITY OR GOVERNMENT AGENCY THAT DEALS WITH HEALTH CARE DOES NOT COMMIT THE CRIME OF VIOLATING PRIVACY IN COMMUNICATIONS IF IT RECORDS A HEALTH CARE EMERGENCY TELEPHONE COMMUNICATION MADE TO THE FACILITY OR AGENCY; AND AMENDING SECTION 45-8-213, MCA. 1525
- 436 (*House Bill No. 254; Harris*) MAKING IT A CIVIL OFFENSE FOR A MEDICAL PRACTITIONER TO ISSUE A WRITTEN PRESCRIPTION ON WHICH THE NAME OF THE DRUG, DOSAGE, INSTRUCTIONS, OR IDENTIFIERS OF THE PRESCRIBING MEDICAL PRACTITIONER CANNOT BE DETERMINED; PROVIDING FOR ENFORCEMENT; REQUIRING ADOPTION OF RULES; AND PROVIDING AN APPLICABILITY DATE 1526
- 437 (*House Bill No. 302; Driscoll*) INCLUDING THE DISSEMINATION OF INFORMATION BY A BOARD OF TRUSTEES OR A SCHOOL SUPERINTENDENT OR A DESIGNATED EMPLOYEE IN A DISTRICT WITH NO SUPERINTENDENT RELATED TO A BOND ISSUE OR LEVY SUBMITTED TO THE ELECTORS AS "PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW"; AMENDING SECTIONS 2-2-121 AND 13-35-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1527
- 438 (*House Bill No. 317; Hamilton*) ALLOWING A SCHOOL BOARD TO MEET IN ANY BUILDING THAT IS ACCESSIBLE TO THE PUBLIC; AND AMENDING SECTION 20-3-322, MCA. 1529
- 439 (*House Bill No. 332; Buzzas*) APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED FOR THE LOW-INCOME ENERGY ASSISTANCE PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1530
- 440 (*House Bill No. 345; Gallik*) EXTENDING THE PERIOD OF TIME FOR WHICH A CAUSE OF ACTION FOR A FRAUDULENT TRANSFER MAY

	BE FILED; AMENDING SECTION 31-2-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1531
441	(<i>House Bill No. 348; Buzzas</i>) RESTRICTING YOUTH ACCESS TO ALCOHOL; AND PROVIDING FOR REGISTRATION OF SALES OF KEGS OF BEER	1531
442	(<i>House Bill No. 349; Olson</i>) REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1533
443	(<i>House Bill No. 453; Furey</i>) PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1534
444	(<i>House Bill No. 474; Buzzas</i>) ELIMINATING THE REQUIREMENT THAT A COUNTY LEGAL NOTICE BE PUBLISHED IN A NEWSPAPER WITH A PAID CIRCULATION AND A PERIODICALS MAILING PERMIT; AND AMENDING SECTION 7-1-2121, MCA.	1539
445	(<i>House Bill No. 536; Callahan</i>) REVISING THE LAWS RELATING TO THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; REMOVING THE TERMINATION OF THE SURCHARGE; PROVIDING FOR THE DEPOSIT OF THE SURCHARGE IN THE STATE GENERAL FUND TO BE USED FOR FUNDING COURT INFORMATION TECHNOLOGY; REQUIRING THE SUPREME COURT ADMINISTRATOR TO REPORT TO THE LEGISLATURE ON THE STATUS OF JUDICIAL BRANCH INFORMATION TECHNOLOGY AND TO COORDINATE WITH THE STATE STRATEGIC INFORMATION TECHNOLOGY PLAN; AMENDING SECTIONS 3-1-317 AND 3-1-702, MCA; REPEALING SECTION 3-5-904, MCA, AND SECTION 5, CHAPTER 498, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE	1540
446	(<i>House Bill No. 590; Buzzas</i>) ALLOWING FOR THE REACTIVATION OF AN ELECTOR IF THE ELECTOR APPEARS IN ORDER TO VOTE OR VOTES BY ABSENTEE BALLOT IN ANY ELECTION; AND AMENDING SECTIONS 13-2-222 AND 13-2-512, MCA	1541
447	(<i>House Bill No. 742; Buzzas</i>) REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND MAINTAIN A HEALTH CARE DECLARATION REGISTRY FOR DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; ESTABLISHING METHODS FOR FILING DECLARATIONS AND FOR ACCESSING THE REGISTRY BY CERTAIN PERSONS AND HEALTH CARE PROVIDERS; PROVIDING AN APPROPRIATION TO BE USED IN ESTABLISHING AND MAINTAINING THE REGISTRY; AND PROVIDING AN EFFECTIVE DATE	1542
448	(<i>Senate Bill No. 108; Lewis</i>) REVISING REQUIREMENTS FOR CERTIFICATION OF INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AUTHORITY TO SUSPEND OR REVOKE	

CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY; CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTIONS 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401, 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE

1545

- 449 (*Senate Bill No. 146; McGee*) ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; CHANGING THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023,

lxix	TITLE CONTENTS	
	46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES	1564
450	(<i>Senate Bill No. 261; Perry</i>) REVISING THE PROCEDURES FOR DECLARING A MANUFACTURED HOME TO BE AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; REVISING THE PROCEDURES FOR REVERSING THE DECLARATION THAT A MANUFACTURED HOME IS AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; AMENDING SECTIONS 15-1-116 AND 70-1-106, MCA; AND REPEALING SECTION 15-1-117, MCA.	1632
451	(<i>Senate Bill No. 292; Barkus</i>) GENERALLY REVISING LOCAL GOVERNMENT AND STATE FINANCE LAWS; CHANGING THE START OF THE PERIOD TO CONTEST THE VALIDITY OF CERTAIN BONDS; CLARIFYING THE LAWS RELATING TO LOCAL GOVERNMENT ISSUANCE OF BOND OR GRANT ANTICIPATION NOTES; PROVIDING A BOND COMMENCEMENT DATE FOR CERTAIN BONDS; PROVIDING THAT CERTAIN REFUNDING BONDS NEED NOT BE SUBJECT TO REDEMPTION AFTER ONE-HALF OF THE BOND'S TERM; CLARIFYING THE TERM "SERIAL BONDS"; AUTHORIZING THE SUBMISSION OF BIDS ELECTRONICALLY AT A PUBLIC SALE OF BONDS; CLARIFYING THAT VARIABLE RATE REFUNDING BONDS MAY BE ISSUED BY A LOCAL GOVERNING BODY; CLARIFYING THE PROTEST PERIOD FOR RURAL SPECIAL IMPROVEMENT DISTRICTS; CLARIFYING THE ISSUANCE OF REFUNDING BONDS FOR SPECIAL IMPROVEMENT DISTRICTS; AUTHORIZING DELINQUENT WATER SERVICE CHARGES TO BECOME LIENS UPON THE PROPERTY SERVED OR TO BE COLLECTED AS A DEBT OF THE PROPERTY OWNER; CLARIFYING THE AUTHORITY OF CITIES TO ISSUE SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; CLARIFYING THE SECURITY OF BONDS FOLLOWING THE DISSOLUTION OF A COUNTY PARK DISTRICT; CLARIFYING THE MAXIMUM INTEREST RATE ON SPECIAL ASSESSMENTS SECURING BONDS; CLARIFYING THE AUTHORITY OF IRRIGATION DISTRICTS AND DRAINAGE DISTRICTS TO LEVY TAXES AND ASSESSMENTS; AUTHORIZING THE POOLING OF SPECIAL IMPROVEMENT DISTRICT BONDS AND SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; AMENDING SECTIONS 7-7-104, 7-7-109, 7-7-2206, 7-7-2207, 7-7-2211, 7-7-2304, 7-7-4206, 7-7-4210, 7-7-4304, 7-7-4502, 7-12-2113, 7-12-2193, 7-12-4194, 7-13-4309, 7-14-4109, 7-16-2443, 17-5-103, 20-9-408, 20-9-410, AND 20-9-464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1635
452	(<i>Senate Bill No. 293; Black</i>) REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN WHICH TAX CREDITS MAY BE PAID; REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN PERCENTAGE OF MONTANA PRODUCT IN ITS	

TOTAL PRODUCTION TO QUALIFY FOR THE TAX INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOLINE AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES

1647

- 453 *(Senate Bill No. 301; Story)* REVISING THE LAWS GOVERNING LOCAL GOVERNMENT MILL LEVIES; ALLOWING LOCAL GOVERNMENTS TO IMPOSE MILL LEVIES FOR PUBLIC OR GOVERNMENTAL PURPOSES RATHER THAN FOR STATUTORILY ENUMERATED PURPOSES; REMOVING RESTRICTIONS ON THE COUNTY ALL-PURPOSE LEVY; REMOVING CERTAIN REFERENCES TO MAXIMUM MILL LEVIES; CHANGING THE CONTENTS OF THE PROPERTY TAX NOTICE; AMENDING SECTIONS 7-1-2103, 7-1-4123, 7-6-2501, 7-6-2521, 7-6-2522, 7-6-2524, 7-6-4401, 7-6-4421, 7-7-4104, 7-13-144, 7-13-3027, 7-21-3410, 15-16-101, 15-16-117, 22-1-304, 50-2-111, 53-21-1010, 67-10-402, AND 81-8-504, MCA; REPEALING SECTIONS 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, AND 50-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

1664

- 454 *(Senate Bill No. 323; Black)* ALLOWING A 5-YEAR CARRYFORWARD OF THE INCOME AND CORPORATE TAX CREDIT FOR THE PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX; AMENDING SECTION 15-50-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE

1673

- 455 *(Senate Bill No. 340; Essmann)* ALLOWING THE CREDIT FOR GEOTHERMAL SYSTEMS INSTALLED IN RESIDENCES TO BE CLAIMED BY A PERSON CONSTRUCTING A RESIDENCE; ALLOWING THE CREDIT TO BE USED FOR CORPORATE LICENSE OR INCOME TAXES; AMENDING SECTION 15-32-115, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . .

1674

- 456 *(Senate Bill No. 380; Tester)* PROVIDING FOR REGULATION OF MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS APPLICABLE TO CARDS AND PERSONS WHO SUPPLY CARDS; SPECIFYING UNLAWFUL ACTS; PROVIDING A RIGHT TO RETURN AND REQUIRING NOTICE OF THE RIGHT TO RETURN MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; REQUIRING REGISTRATION OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING FINANCIAL RESPONSIBILITY OF

	SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; PROVIDING CERTAIN EXCEPTIONS, INCLUDING A WAIVER FOR PREFERRED PROVIDER ORGANIZATIONS; REQUIRING A CARD EDUCATION PROGRAM; PROHIBITING FRAUD CONCERNING CARDS; AMENDING SECTIONS 33-1-318, 33-1-1301, AND 33-1-1302, MCA; REPEALING SECTION 33-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE	1675
457	(<i>Senate Bill No. 415; Tester</i>) CREATING THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS; PROVIDING A GRADUATED RENEWABLE ENERGY STANDARD; AUTHORIZING ADMINISTRATIVE PENALTIES; PROVIDING A WAIVER PROCESS FOR PUBLIC UTILITIES; ESTABLISHING A PROCUREMENT PROCESS; AUTHORIZING ADVANCE APPROVAL OF CERTAIN PROCUREMENT CONTRACTS BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE SUBMISSION OF PROCUREMENT PLANS; AUTHORIZING THE COMMISSION TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS ACT; PROVIDING THE COMMISSION WITH RULEMAKING AUTHORITY; EXEMPTING COOPERATIVE UTILITIES FROM THE GRADUATED RENEWABLE ENERGY STANDARD; REQUIRING CERTAIN COOPERATIVE UTILITIES TO IMPLEMENT AND ENFORCE THEIR OWN RENEWABLE ENERGY STANDARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1683
458	(<i>Senate Bill No. 507; Brueggeman</i>) GENERALLY REVISING MOTOR VEHICLE LAWS; PROVIDING DEFINITIONS; CLARIFYING THE ISSUING OF CERTIFICATES OF TITLE, REGISTRATION, AND LICENSE PLATE REQUIREMENTS FOR STREET RODS, SPECIALLY CONSTRUCTED VEHICLES, KIT VEHICLES, AND CUSTOM VEHICLES; AUTHORIZING CERTAIN CUSTOM VEHICLES AND STREET RODS NOT USED FOR GENERAL TRANSPORTATION PURPOSES TO DISPLAY ONLY A REAR LICENSE PLATE UPON PAYMENT OF A FEE; AMENDING SECTIONS 61-3-301, 61-3-411, 61-9-204, 61-9-407, AND 61-9-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1689
459	(<i>House Bill No. 4; Musgrove</i>) APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2005, 2006, AND 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1696
460	(<i>House Bill No. 18; Juneau</i>) EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REDUCING THE REQUIRED QUORUM FOR THE COMMISSION FROM SEVEN TO SIX; PROVIDING AN APPROPRIATION; AMENDING SECTION 90-1-131, MCA, SECTION 19, CHAPTER 512, LAWS OF 1999, AND SECTION 5, CHAPTER 69, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1704
461	(<i>House Bill No. 60; Harris</i>) ESTABLISHING A DECONTAMINATION STANDARD FOR THE CLEANUP OF INDOOR PROPERTY CONTAMINATED BY THE CLANDESTINE MANUFACTURE OF METHAMPHETAMINE; PROVIDING FOR RULEMAKING AUTHORITY TO CHANGE THE STANDARD OR TO ADOPT SIMILAR STANDARDS FOR PRECURSORS TO METHAMPHETAMINE TO PROTECT HUMAN HEALTH; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE MINIMUM STANDARDS AND	

REQUIREMENTS FOR CERTIFYING PERSONS TO CONDUCT METHAMPHETAMINE LAB REMEDIATION ACTIVITIES; REQUIRING NOTICE TO SUBSEQUENT OCCUPANTS OF CONTAMINATED INHABITABLE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING CIVIL IMMUNITY FOR A PROPERTY OWNER AND OWNER'S AGENT IN CERTAIN INSTANCES 1705

462 (*House Bill No. 63; Villa*) GENERALLY REVISING SCHOOL FINANCE LAWS; ALLOWING SCHOOL DISTRICTS TO LEASE PERSONAL PROPERTY; EXPANDING THE USES FOR CERTAIN SCHOOL DISTRICT FUNDS; CHANGING A BUDGET DEADLINE FOR JOINT DISTRICTS; INCREASING THE ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; PROVIDING FOR 3-YEAR AVERAGING OF ANB FOR SCHOOL DISTRICTS WITH DECLINING ENROLLMENT FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; ALLOWING A SCHOOL DISTRICT TO PERMISSIVELY LEVY UP TO THE SAME OVER-BASE PROPERTY TAX REVENUE LEVIED IN THE PREVIOUS FISCAL YEAR; REVISING CERTAIN CALCULATIONS FOR GUARANTEED TAX BASE FUNDING; REVISING THE LIMITATIONS ON SCHOOL DISTRICT BONDED INDEBTEDNESS; CONFORMING CERTAIN STATUTES TO CURRENT LAW; REMOVING A REFERENCE TO A ONE-TIME-ONLY STATE PAYMENT TO SCHOOL DISTRICTS; TEMPORARILY EXTENDING SCHOOL ELECTION DEADLINES; PROVIDING FOR INTERDISTRICT AGREEMENTS FOR FUND TRANSFERS BY FEBRUARY 1 OF THE CURRENT FISCAL YEAR; AMENDING SECTIONS 20-5-323, 20-6-607, 20-7-102, 20-9-130, 20-9-131, 20-9-142, 20-9-151, 20-9-152, 20-9-306, 20-9-308, 20-9-311, 20-9-314, 20-9-321, 20-9-353, 20-9-366, 20-9-406, AND 20-9-443, MCA; REPEALING SECTION 20-9-375, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES. 1708

463 (*House Bill No. 83; Campbell*) REVISING THE SCHOOL DISTRICT TUITION LAWS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION FOR CHILDREN WHO ATTEND SCHOOL OUTSIDE OF THE DISTRICT OF RESIDENCE BECAUSE OF PLACEMENT IN FOSTER CARE OR A GROUP HOME; ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT REPORT THE NUMBER OF OUT-OF-DISTRICT STUDENTS ATTENDING SCHOOL IN THE DISTRICT BECAUSE OF GEOGRAPHIC CONDITIONS; ELIMINATING THE REQUIREMENT FOR THE COUNTY SUPERINTENDENT TO PAY TUITION ON BEHALF OF THE STATE UNDER CERTAIN CONDITIONS; ESTABLISHING A TUITION PAYMENT SCHEDULE FOR DISTRICTS THAT PAY TUITION; CLARIFYING WHERE A DISTRICT MUST CREDIT TUITION RECEIPTS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION AND TRANSPORTATION COSTS FOR A CHILD WITH A DISABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-3-205, 20-5-321, 20-5-324, 20-7-420, 20-9-212, 20-9-335, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE 1726

464 (*House Bill No. 102; Lenhart*) DEPOSITING FEES FROM THE REGISTRATION OF CERTAIN VEHICLES AND DRIVER'S LICENSES TO THE STATE GENERAL FUND; STATUTORILY APPROPRIATING FROM THE STATE GENERAL FUND TO THE MONTANA HIGHWAY PATROL OFFICERS' RETIREMENT PENSION TRUST FUND THE AMOUNTS REQUIRED TO PAY CERTAIN SUPPLEMENTAL BENEFITS UNDER THE HIGHWAY PATROL OFFICERS'

	RETIREMENT SYSTEM; AMENDING SECTIONS 15-1-122, 17-7-502, 19-6-401, 19-6-404, 19-6-709, 61-3-527, 61-3-530, 61-3-562, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE	1735
465	(<i>House Bill No. 146; Gallik</i>) PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE	1744
466	(<i>House Bill No. 159; McKenney</i>) GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.	1748
467	(<i>House Bill No. 182; Roberts</i>) GENERALLY REVISING AND CONSOLIDATING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; DISTINGUISHING BETWEEN DEPARTMENT AND BOARD OR PROGRAM DUTIES REGARDING LICENSURE, EXAMINATION, AND FEES; CLARIFYING THE DETERMINATION AND DISTRIBUTION OF FEES FOR LICENSURE, EXAMINATION, AND ADMINISTRATIVE COSTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO HANDLE CERTAIN TASKS RELATED TO BOARDS, INCLUDING MONITORING OF LICENSING BOARDS' CASH BALANCES AND HIRING SERVICES FOR BOARDS; ALLOWING FOR FEE ADJUSTMENTS; REQUIRING STANDARDIZATION OF FORMS; INCLUDING DEPARTMENT PROGRAMS UNDER CERTAIN PROVISIONS APPLICABLE TO BOARDS; SETTING UNIFORM STANDARDS FOR LICENSE RENEWALS, INCLUDING RENEWAL PERIODS; REVISING CERTAIN NOTIFICATION PERIODS; REMOVING SPECIFIC BOARD OR PROGRAM REFERENCES IF DUTIES ARE ASSIGNED TO THE DEPARTMENT OR PROVIDED GENERALLY TO ALL BOARDS; REMOVING THE REQUIREMENT TO PUBLISH AN ANNUAL LIST OF SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; REMOVING CERTAIN SPECIFIED LICENSING PERIODS; REMOVING THE PUBLICATION REQUIREMENT FOR OUTFITTERS' NAMES AND ADDRESSES; REPEALING CERTAIN BOARD-SPECIFIC OR PROGRAM-SPECIFIC REFERENCES TO LICENSURE, EXAMINATIONS, AND FEES;	

AMENDING SECTIONS 23-3-501, 23-4-105, 23-4-201, 27-12-206, 33-30-1013, 37-1-101, 37-1-104, 37-1-105, 37-1-121, 37-1-130, 37-1-131, 37-1-134, 37-1-141, 37-1-302, 37-1-306, 37-1-307, 37-2-101, 37-3-203, 37-3-211, 37-3-301, 37-3-305, 37-3-306, 37-3-307, 37-3-309, 37-3-311, 37-3-313, 37-3-341, 37-3-342, 37-3-343, 37-3-344, 37-3-347, 37-4-301, 37-4-307, 37-4-402, 37-4-406, 37-6-304, 37-7-104, 37-7-302, 37-7-321, 37-7-605, 37-7-606, 37-8-102, 37-8-202, 37-8-204, 37-9-304, 37-9-305, 37-10-302, 37-10-304, 37-11-201, 37-11-304, 37-12-201, 37-12-302, 37-13-302, 37-14-306, 37-16-202, 37-16-405, 37-17-302, 37-18-202, 37-19-401, 37-19-702, 37-19-807, 37-20-301, 37-20-302, 37-22-201, 37-22-301, 37-22-302, 37-23-101, 37-23-202, 37-23-203, 37-23-206, 37-24-202, 37-24-303, 37-24-310, 37-25-201, 37-26-201, 37-26-403, 37-27-105, 37-27-210, 37-28-104, 37-28-202, 37-29-306, 37-31-203, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323, 37-34-201, 37-34-305, 37-35-103, 37-40-302, 37-42-304, 37-42-308, 37-47-101, 37-47-201, 37-47-304, 37-50-304, 37-51-204, 37-51-303, 37-51-305, 37-51-603, 37-53-104, 37-60-304, 37-66-304, 37-67-303, 37-67-321, 37-68-201, 37-68-304, 37-68-305, 37-68-307, 37-68-310, 37-68-312, 37-69-304, 37-69-305, 37-69-306, 37-69-401, 37-72-102, 37-72-202, 37-72-305, 37-76-109, 50-16-201, 50-74-312, AND 80-8-207, MCA; REPEALING SECTIONS 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE

1766

- 468 *(House Bill No. 186; Bergren)* REGULATING THE OPERATION OF VARIOUS TYPES OF VEHICLES; DEFINING "MOTORIZED NONSTANDARD VEHICLE" AND "ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE"; PROHIBITING THE OPERATION OF MOTORIZED NONSTANDARD VEHICLES ON CERTAIN WAYS OF THIS STATE OPEN TO THE PUBLIC UNLESS AUTHORIZED BY THE LOCAL GOVERNING BODY; AUTHORIZING THE OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON CERTAIN SIDEWALKS, ROADS, AND STREETS; REVISING THE DEFINITIONS OF "MOTOR VEHICLE", "MOTORCYCLE", AND "MOTOR-DRIVEN CYCLE"; CLARIFYING THAT LOCAL AUTHORITIES MAY REGULATE MOTORIZED NONSTANDARD VEHICLES ON SIDEWALKS, STREETS, AND HIGHWAYS UNDER THEIR JURISDICTION; AMENDING SECTIONS 33-23-204, 61-1-102, 61-1-105, 61-1-106, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

1832

- 469 *(House Bill No. 188; Bergren)* GENERALLY REVISING THE SECURITIES AND INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; CLARIFYING A DEPOSITORY FOR SECURITIES EXAMINATION COSTS; CLARIFYING VARIOUS ACCOUNT, MORTALITY TABLE, AND MANUAL REFERENCES; REVISING THE APPLICABILITY OF CERTAIN REPORTING PENALTY PROVISIONS; EXPANDING REINSURANCE OPTIONS FOR FARM MUTUAL INSURERS; EXCLUDING CERTAIN UNALLOCATED ANNUITY CONTRACTS FROM THE LIFE AND HEALTH INSURANCE GUARANTY

	ASSOCIATION ACCOUNT; CHANGING A REFERENCE TO SURPLUS LINES PRODUCER FEE; ADDING A PRIME RATE FACTOR TO CERTAIN INTEREST RATE PAYMENTS; ALLOWING INCLUSION OF THE HIGHWAY TRAFFIC SAFETY FEE IN A PREMIUM REDUCTION; REVISING THE DEFINITION OF "CONSULTANT"; CHANGING REFERENCES TO APPLICATION FORMS; SPECIFYING HOW CRIMINAL BACKGROUND CHECKS MAY BE HANDLED; CLARIFYING APPLICATION OF CONTINUING EDUCATION PROVISIONS TO INDIVIDUALS AND REMOVING A CARRYFORWARD PROVISION; ADDING REPORTING AND COMPLIANCE REQUIREMENTS FOR RENTAL VEHICLE ENTITIES; LIMITING INTEREST DUE ON CLAIMS; REVISING THE DATE FOR AN EXEMPTION RELATED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY PRIVACY REGULATIONS; CLARIFYING INCONTESTABILITY OF CERTAIN LIFE INSURANCE EXCHANGE OR CONVERSION POLICIES; INCLUDING INTENT NOTIFICATION IN CHARITABLE GIFT ANNUITY REQUIREMENTS; REVISING DOWNWARD THE NUMBER OF EMPLOYEES NECESSARY FOR CERTAIN GROUP INSURANCE POLICIES; CLARIFYING POLICY COVERAGE OF NEWBORNS; CLARIFYING THE DEFINITION OF "CREDITABLE COVERAGE"; EXCLUDING EXCEPTED BENEFIT PLANS FROM CONVERSION REQUIREMENTS; DEFINING RESIDENCY FOR THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING RULEMAKING AUTHORITY RELATED TO THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING REFERENCES TO THE COMPREHENSIVE HEALTH ASSOCIATION PORTABILITY PLAN; CLARIFYING PERMISSIBLE OFFSET FOR PERSONAL PROPERTY LOSS; CLARIFYING PROVISIONS THAT APPLY JOINTLY TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REPEALING VALUATION PROVISIONS FOR BONDS, CERTAIN SECURITIES, PROPERTY, AND PURCHASE MONEY MORTGAGES; AMENDING SECTIONS 30-10-115, 30-10-209, 33-2-305, 33-2-523, 33-2-701, 33-3-431, 33-4-101, 33-4-503, 33-10-203, 33-12-107, 33-16-222, 33-17-102, 33-17-211, 33-17-220, 33-17-301, 33-17-401, 33-17-503, 33-17-1203, 33-17-1205, 33-17-1502, 33-18-232, 33-19-105, 33-20-105, 33-20-704, 33-20-1101, 33-22-101, 33-22-140, 33-22-508, 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1517, 33-22-1803, 33-24-103, 33-28-105, AND 33-28-202, MCA; REPEALING SECTIONS 33-2-532, 33-2-533, 33-2-534, AND 33-2-535, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES	1836
470	(<i>House Bill No. 214; Sales</i>) CREATING A CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSE; PROVIDING TERMS, CONDITIONS, AND SALE CRITERIA FOR THE LICENSE; LIMITING THE NUMBER OF AVAILABLE CLASS B-13 LICENSES AND PROVIDING THAT B-13 LICENSES ARE NOT INCLUDED IN THE LIMIT ON AVAILABLE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; PROVIDING THAT THE HOLDER OF A CLASS B-13 LICENSE MAY ALSO APPLY FOR A NONRESIDENT ANTLERLESS ELK B TAG; AMENDING SECTIONS 87-2-104 AND 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . .	1873
471	(<i>House Bill No. 235; Lange</i>) IMPLEMENTING CERTAIN 2004 RECOMMENDATIONS OF THE PRIVATE LANDS AND PUBLIC WILDLIFE ADVISORY COUNCIL; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE CERTAIN BIG GAME LICENSES THROUGH AN ANNUAL LOTTERY AND DEDICATING LOTTERY PROCEEDS TO HUNTING ACCESS ENHANCEMENT PROGRAMS AND LAW ENFORCEMENT; ALLOWING A HUNTER MANAGEMENT	

	PROGRAM COOPERATOR TO DESIGNATE AN IMMEDIATE FAMILY MEMBER TO RECEIVE THE COOPERATOR'S COMPLIMENTARY LICENSE; ALLOWING ANY LANDOWNER WHO IS ENROLLED IN THE BLOCK MANAGEMENT PROGRAM TO RECEIVE BENEFITS PROVIDED UNDER THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROVIDE FISCAL ANALYSES OF HUNTING AND FISHING ACCESS ENHANCEMENT PROGRAM FUNDING SOURCES TO THE REVIEW COMMITTEE; AMENDING SECTIONS 87-1-266, 87-1-267, 87-1-269, AND 87-2-702, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.	1878
472	(<i>House Bill No. 266; Rice</i>) IMPLEMENTING THE NOXIOUS WEED MANAGEMENT TRUST FUND CONSTITUTIONAL AMENDMENT; AMENDING SECTIONS 60-3-201, 80-7-508, 80-7-801, 80-7-811, 80-7-814, AND 80-7-815, MCA; AND PROVIDING EFFECTIVE DATES	1883
473	(<i>House Bill No. 288; Noennig</i>) PROVIDING FOR THE DEPARTMENT OF CORRECTIONS INSTEAD OF THE CLERKS OF COURT TO COLLECT FEES CHARGED FOR SUPERVISION BY THE DEPARTMENT; AND AMENDING SECTIONS 45-9-202 AND 46-23-1031, MCA	1887
474	(<i>House Bill No. 327; Groesbeck</i>) REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY \$50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103, 39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE	1889
475	(<i>House Bill No. 331; Wanzenried</i>) PROVIDING FOR MEDICAL MALPRACTICE INSURANCE WHEN THE INSURANCE IS NOT REASONABLY AVAILABLE; CREATING AN ASSOCIATION CONSISTING OF CERTAIN CASUALTY INSURERS TO PROVIDE THE INSURANCE; PROVIDING A PROCESS FOR DETERMINING AVAILABILITY OF MEDICAL MALPRACTICE INSURANCE; CREATING A STABILIZATION RESERVE FUND; AND AMENDING SECTION 33-11-105, MCA	1890
476	(<i>House Bill No. 351; Butcher</i>) REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO EXPLAIN THE REQUIREMENTS OF FIXING VALUES OF IMPROVEMENTS BY ARBITRATION; REQUIRING A LESSEE TO PROVIDE A LIST OF IMPROVEMENTS AND THEIR REASONABLE VALUE PRIOR TO RENEWAL OF A LEASE AND REQUIRING THAT THE INFORMATION BE PROVIDED TO A PARTY REQUESTING TO BID ON THE LEASE; CHANGING COURT VENUE FOR CONTESTING VALUES; AMENDING SECTIONS 77-6-302 AND 77-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1899
477	(<i>House Bill No. 374; Harris</i>) INCREASING THE INCARCERATION AND FINE THAT MAY BE IMPOSED ON A PERSON FOR A FIRST THROUGH THIRD CONVICTION OF DRIVING WHILE UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA	1900
478	(<i>House Bill No. 385; Wells</i>) REVISING THE LAW RELATING TO DRIVER'S LICENSE ELIGIBILITY; PROHIBITING THE ISSUANCE OF A LICENSE TO A PERSON WHO CANNOT PROVE THAT THE PERSON'S PRESENCE IN THE UNITED STATES IS AUTHORIZED	

	UNDER FEDERAL LAW; PROVIDING FOR ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL WHOSE PRESENCE IN THE UNITED STATES IS TEMPORARILY AUTHORIZED UNDER FEDERAL LAW AND IMPOSING CERTAIN CONDITIONS ON RENEWAL AND EXPIRATION OF THAT LICENSE; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL; AMENDING SECTIONS 61-5-105, 61-5-107, 61-5-111, AND 61-5-125, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES . . .	1902
479	<i>(House Bill No. 386; Sinrud)</i> ESTABLISHING QUALIFICATIONS FOR AN INDIVIDUAL APPOINTED AS THE COMMISSIONER OF POLITICAL PRACTICES; ESTABLISHING RESTRICTIONS ON THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING DEFINITIONS THAT APPLY TO THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THAT A GOVERNOR WHO REMOVES A COMMISSIONER OF POLITICAL PRACTICES FROM OFFICE STATE THE REASONS FOR REMOVAL IN WRITING; ELIMINATING THE PERIOD DURING WHICH AN INDIVIDUAL WHO SERVED AS COMMISSIONER OF POLITICAL PRACTICES WAS RESTRICTED FROM BECOMING A CANDIDATE FOR PUBLIC OFFICE; IDENTIFYING CONDITIONS REGARDING THE RECUSAL OF THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THE APPOINTMENT OF AND SETTING THE QUALIFICATIONS FOR A DEPUTY TO SERVE WHEN THE COMMISSIONER OF POLITICAL PRACTICES IS RECUSED; AND AMENDING SECTIONS 13-27-111, 13-37-101, 13-37-102, 13-37-103, AND 13-37-111, MCA	1907
480	<i>(House Bill No. 395; Becker)</i> PROVIDING THAT A PRIVATE INSURER OR PUBLIC ASSISTANCE PROGRAM IS RESPONSIBLE FOR THE COSTS OF PRECOMMITMENT DETENTION, EXAMINATION, AND TREATMENT OF A RESPONDENT IN A MENTAL HEALTH COMMITMENT PROCEEDING BEFORE THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR THOSE COSTS; AMENDING SECTION 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE	1910
481	<i>(House Bill No. 411; Wells)</i> CLARIFYING THAT TOBACCO TAX REVENUE DEDICATED TO SUPPORT THE OPERATION AND MAINTENANCE OF VETERANS' HOMES IS RESTRICTED TO THAT USE; AMENDING SECTION 10-2-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1911
482	<i>(House Bill No. 414; Brown)</i> ESTABLISHING A YOUTH INTERVENTION AND PREVENTION ACCOUNT TO BE USED FOR THE YOUTH COURT INTERVENTION AND PREVENTION PROGRAMS; PROVIDING FOR FUND TRANSFERS TO THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 41-5-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1912
483	<i>(House Bill No. 418; Keane)</i> CLARIFYING THE DEFINITION OF "SUPERVISORY EMPLOYEE" IN THE CONTEXT OF COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES; AMENDING SECTION 39-31-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1914
484	<i>(House Bill No. 421; Golie)</i> ALLOWING A QUALIFIED NONRESIDENT CHILD OF A RESIDENT TO PURCHASE CERTAIN NONRESIDENT HUNTING AND FISHING LICENSES AT A REDUCED RATE; CREATING A CLASS B-15 NONRESIDENT CHILD'S ELK LICENSE FOR USE ONLY BY A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; ESTABLISHING THE CONDITIONS AND RATE OF THE	

	LICENSES AVAILABLE TO A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; AND PROVIDING A DELAYED EFFECTIVE DATE. . .	1916
485	(<i>House Bill No. 423; Stahl</i>) APPROPRIATING \$500,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR THE ACQUISITION OF LAND AND THE CONSTRUCTION OF A FACILITY FOR CREATION OF THE GREAT PLAINS DINOSAUR PARK IN MALTA; AND PROVIDING AN EFFECTIVE DATE	1917
486	(<i>House Bill No. 428; Gutsche</i>) GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING STANDARD PROCEDURES FOR ISSUING AND APPEALING ADMINISTRATIVE ORDERS; PROHIBITING THE DEPARTMENT FROM WAIVING A PENALTY ASSESSED UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IF A PERSON OR OPERATOR FAILS TO ABATE THE VIOLATION IN ACCORDANCE WITH A NOTICE OR ORDER; PROVIDING FOR A WRITTEN RELEASE OF LIABILITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; PROVIDING PENALTIES FOR VIOLATIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AMENDING VENUE PROVISIONS UNDER METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-254, 82-4-361, AND 82-4-441, MCA.	1918
487	(<i>House Bill No. 429; Gutsche</i>) GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1926
488	(<i>House Bill No. 431; Raser</i>) REVISING THE REQUIREMENTS FOR CREATING A RURAL IMPROVEMENT DISTRICT; REQUIRING THAT A RESOLUTION AND NOTICE OF INTENTION TO CREATE A DISTRICT IN WHICH RELATED IMPROVEMENTS COMPOSE A LARGER PROJECT INCLUDE THE FULL SCOPE, INCLUDING COSTS AND IMPACTS, OF THE RELATED OR LARGER PROJECT; REVISING THE REQUIREMENTS FOR A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT; REVISING WHEN A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT IS SUFFICIENT TO BAR THE PROCEEDINGS; RESTRICTING THE AUTHORITY OF THE COUNTY COMMISSIONERS TO OVERRULE THE PROTESTS; AND AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, AND 7-12-2112, MCA.	1947
489	(<i>House Bill No. 435; Branae</i>) ESTABLISHING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM TO ENCOURAGE MONTANA'S MOST TALENTED HIGH SCHOOL GRADUATES OR	

	MONTANA HIGH SCHOOL GRADUATES WITH FINANCIAL NEEDS TO ACQUIRE A POSTSECONDARY EDUCATION BY PROVIDING STUDENT SCHOLARSHIPS BASED ON MERIT OR FINANCIAL NEED TO STUDENTS ATTENDING IN-STATE POSTSECONDARY INSTITUTIONS AND CERTAIN OUT-OF-STATE PUBLIC COLLEGES OR UNIVERSITIES OR, WITH DONATIONS FROM PRIVATE SOURCES, TO STUDENTS ATTENDING MONTANA PRIVATE COLLEGES IF SO DESIGNATED BY THE DONOR; ESTABLISHING A GOVERNOR'S SCHOLARSHIP ADVISORY COUNCIL APPOINTED BY THE GOVERNOR TO ASSIST THE BOARD OF REGENTS OF HIGHER EDUCATION IN AWARDED AND ADMINISTERING THE SCHOLARSHIP PROGRAM; PROVIDING ANNUAL SCHOLARSHIPS BASED ON VARIOUS CRITERIA; PROVIDING FOR REALLOCATION OF MONEY TO OTHER SCHOLARSHIPS IF A HIGH SCHOOL DOES NOT HAVE AN ELIGIBLE STUDENT OR IF A RECIPIENT BECOMES INELIGIBLE; PROVIDING THAT SCHOLARSHIP FUNDING IS A STATE OBLIGATION; ESTABLISHING STUDENT ELIGIBILITY CRITERIA; AUTHORIZING THE BOARD OF REGENTS TO ADOPT PROCEDURES TO IMPLEMENT THE MERIT-BASED AND FINANCIAL NEED-BASED SCHOLARSHIPS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1949
490	(<i>House Bill No. 438; Buzzas</i>) PROVIDING BRAILLE SERVICES TO A BLIND OR VISUALLY IMPAIRED CHILD; DETERMINING THE NEED FOR BRAILLE INSTRUCTION; REQUIRING THE BOARD OF PUBLIC EDUCATION TO ADOPT STANDARDS FOR PERSONNEL WHO PROVIDE BRAILLE INSTRUCTION; REQUIRING A SCHOOL DISTRICT TO ENSURE THE AVAILABILITY OF TEXTBOOKS THAT COMPLY WITH FEDERAL LAW IN A TIMELY MANNER; REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A BRAILLE ELECTRONIC EQUIPMENT LOAN PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-602, MCA; AND PROVIDING AN EFFECTIVE DATE	1956
491	(<i>House Bill No. 457; Noennig</i>) REVISING LAWS GOVERNING LICENSING AND PROFESSIONAL PRACTICES OF RADIOLOGIC TECHNOLOGISTS AND RADIOLOGIST ASSISTANTS; REVISING DEFINITIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIC TECHNOLOGISTS AND SUPERVISION OF THOSE INJECTIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIST ASSISTANTS; REQUIRING ACTION BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS UPON REQUESTS FOR LICENSURE BY RADIOLOGIC TECHNOLOGISTS; REQUIRING ADOPTION OF RULES BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS; AMENDING SECTIONS 37-14-102, 37-14-301, AND 37-14-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1958
492	(<i>House Bill No. 473; Parker</i>) REVISING LAWS RELATED TO FIRE SEASONS; ALLOWING SMALL, RECREATIONAL FIRES WITHOUT A PERMIT OR PERMISSION; AND AMENDING SECTIONS 7-33-2205 AND 7-33-2206, MCA	1961
493	(<i>House Bill No. 476; McAlpin</i>) INCREASING THE MARRIAGE LICENSE FEE AND THE FEE FOR FILING A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION TO FUND DOMESTIC AND SEXUAL VIOLENCE VICTIMS' SERVICES; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION PROGRAM; PROVIDING THAT THE BOARD OF CRIME CONTROL ADMINISTER GRANTS UNDER THE PROGRAM; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION ACCOUNT; AMENDING SECTIONS 25-1-201, 40-1-202, AND 40-1-311, MCA; AND PROVIDING AN EFFECTIVE DATE	1962

MONTANA SESSION LAWS 2005

lxxx

- 494 (*House Bill No. 484; Jones*) REQUIRING THE LICENSING OF A PERSON, FIRM, OR CORPORATION THAT OPERATES A MOBILE SLAUGHTER FACILITY; DEFINING "MOBILE SLAUGHTER FACILITY"; APPLYING THE SAME INSPECTION PROVISIONS AND REGULATIONS THAT ARE REQUIRED OF ALL OFFICIAL ESTABLISHMENTS TO MOBILE SLAUGHTER FACILITIES; PROVIDING A RESTRICTED APPROPRIATION; AMENDING SECTIONS 81-9-201, 81-9-217, 81-9-220, 81-9-227, AND 81-9-228, MCA; AND PROVIDING AN EFFECTIVE DATE 1968
- 495 (*House Bill No. 502; Wiseman*) REMOVING THE REQUIREMENT THAT FINGERPRINTS BE SUBMITTED AND A BACKGROUND CHECK BE CONDUCTED WITH RESPECT TO A MANAGER OF A FACILITY FOR WHICH AN APPLICATION FOR A BEER AND WINE LICENSE FOR OFF-PREMISES CONSUMPTION IS BEING SOUGHT; CLARIFYING THE REQUIREMENT FOR ADDITIONAL FINGERPRINTING AND BACKGROUND CHECKS WITH RESPECT TO A LICENSE FOR OFF-PREMISES CONSUMPTION; AMENDING SECTION 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1973
- 496 (*House Bill No. 512; Witt*) APPROPRIATING UP TO \$1.1 MILLION OF FEDERAL FUNDS TO THE DEPARTMENT OF TRANSPORTATION FOR LOCAL RAIL FREIGHT ASSISTANCE PROGRAMS; AMENDING SECTIONS 60-11-111 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE 1974
- 497 (*House Bill No. 530; Matthews*) DESIGNATING MILES CITY AS A CULTURAL HERITAGE AREA; AMENDING SECTION 60-2-220, MCA; AND PROVIDING AN EFFECTIVE DATE. 1976
- 498 (*House Bill No. 537; Wanzenried*) PROHIBITING THE ADVERSE USE OF INQUIRIES REGARDING INSURANCE COVERAGE; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN EFFECTIVE DATE 1976
- 499 (*House Bill No. 540; Dickenson*) AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR COLLEGES OF TECHNOLOGY AND OTHER CAPITAL PROJECTS; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1978
- 500 (*House Bill No. 541; Glaser*) REVISING THE REGISTRATION OF CERTAIN MOTOR HOMES; ALLOWING MOTOR HOMES 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; ESTABLISHING THE PERMANENT REGISTRATION FEE; PROVIDING THAT CERTAIN FEES FOR PERMANENT REGISTRATION ARE FIVE TIMES THE EXISTING FEES; AMENDING SECTIONS 15-1-122, 19-6-709, 61-3-303, 61-3-321, 61-3-332, 61-3-479, AND 61-3-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1979
- 501 (*House Bill No. 550; Windy Boy*) APPROPRIATING MONEY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR HOLDING A MONTANA YOUTH LEADERSHIP FORUM FOR STUDENTS WITH DISABILITIES, INCLUDING INDIAN STUDENTS ON MONTANA RESERVATIONS 1992
- 502 (*House Bill No. 552; Caferro*) PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM APPLYING FINANCIAL CRITERIA BELOW \$15,000 FOR RESOURCES OTHER THAN INCOME IN DETERMINING THE ELIGIBILITY OF CHILDREN UNDER THE POVERTY LEVEL-RELATED CHILDREN'S MEDICAID COVERAGE GROUPS; PROVIDING AN APPROPRIATION; AMENDING

	SECTION 53-6-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1992
503	(<i>House Bill No. 574; Branae</i>) AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO ISSUE BONDS UPON APPROVAL OF A BOND PROPOSITION BY A MAJORITY VOTE OF THE ELECTORATE AT CERTAIN ELECTIONS; AMENDING SECTIONS 20-6-206, 20-6-318, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1994
504	(<i>House Bill No. 577; McAlpin</i>) APPROPRIATING MONEY TO THE OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO BE USED FOR COSTS FOR SEXUAL ASSAULT FORENSIC EXAMS FOR SEXUAL ASSAULT VICTIMS; AMENDING SECTIONS 2-15-2014 AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE	1996
505	(<i>House Bill No. 606; Gutsche</i>) REQUIRING CERTAIN SMALL MINERS WHO INTEND TO USE AN IMPOUNDMENT TO STORE WASTE FROM ORE PROCESSING TO OBTAIN APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF AN IMPOUNDMENT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO POST A PERFORMANCE BOND; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1997
506	(<i>House Bill No. 615; Harris</i>) CREATING AN ENVIRONMENTAL VIOLATIONS INVESTIGATION AND PROSECUTION AUTHORITY IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN EFFECTIVE DATE	2001
507	(<i>House Bill No. 645; Clark</i>) REVISING LAWS GOVERNING SPECIAL LICENSE PLATES FOR PERMANENTLY DISABLED PERSONS; ALLOWING A PERSON WHO HAS A PERMANENT DISABILITY THAT MEETS CERTAIN CRITERIA TO CONTINUE TO DISPLAY A SPECIAL LICENSE PLATE BEARING THE SYMBOL OF A WHEELCHAIR UPON VEHICLE REREGISTRATION WITHOUT SUBMITTING AN ADDITIONAL APPLICATION; AMENDING SECTIONS 49-4-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	2001
508	(<i>House Bill No. 652; Cohenour</i>) ALLOWING A SCHOOL DISTRICT TO EXTEND A BUS ROUTE ACROSS ANOTHER SCHOOL DISTRICT IN ORDER TO PROVIDE TRANSPORTATION TO STUDENTS WITHIN ITS OWN DISTRICT; AMENDING SECTION 20-10-126, MCA; AND PROVIDING AN EFFECTIVE DATE	2007
509	(<i>House Bill No. 678; Cohenour</i>) REVISING LENGTH LIMITS ON TRIPLE-TRAILER TRUCK CONFIGURATIONS; AND AMENDING SECTION 61-10-124, MCA	2008
510	(<i>House Bill No. 681; Raser</i>) REVISING THE LAWS ON SCHOOL DISTRICT CONSOLIDATION AND ANNEXATION; ESTABLISHING A SINGLE PROCEDURE FOR THE ANNEXATION AND CONSOLIDATION OF SCHOOL DISTRICTS; PROVIDING FOR AN INTERIM BOARD OF TRUSTEES FOLLOWING PASSAGE OF A CONSOLIDATION ELECTION; CLARIFYING THAT DISTRICTS MAY CONSOLIDATE OR ANNEX ACROSS COUNTY LINES; REQUIRING A RESOLUTION OR PETITION FOR CONSOLIDATION OR ANNEXATION TO STATE WHETHER OR NOT THE CONSOLIDATION OR ANNEXATION WILL OCCUR WITH ASSUMPTION OF BONDED INDEBTEDNESS; REQUIRING A CONSOLIDATION ELECTION TO BE HELD NO LATER THAN DECEMBER 31 PRECEDING THE SCHOOL FISCAL YEAR IN WHICH THE CONSOLIDATION IS TO BECOME	

EFFECTIVE; CLARIFYING THAT A CONSOLIDATION OR ANNEXATION IS EFFECTIVE JULY 1 FOLLOWING AN ELECTION; CLARIFYING THAT CONSOLIDATION OR ANNEXATION MUST OCCUR WITH CONTIGUOUS DISTRICTS; CLARIFYING THE PROCEDURE FOR DETERMINING APPROVAL OF A CONSOLIDATION OR ANNEXATION WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ALLOWING AN ABANDONED DISTRICT TO ATTACH TO A CONTIGUOUS DISTRICT IN AN ADJACENT COUNTY; ALLOWING FOR THE CONSOLIDATION AND ANNEXATION OF K-12 DISTRICTS; ALLOWING DISTRICTS TO CONSOLIDATE ACROSS COUNTY LINES WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ELIMINATING THE SPECIAL PROCEDURES FOR THE CONSOLIDATION, ABANDONMENT, AND DISSOLUTION OF JOINT DISTRICTS; ELIMINATING THE SEPARATE PROCEDURES FOR THE ANNEXATION AND CONSOLIDATION OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 20-3-205, 20-3-302, 20-3-312, 20-6-209, 20-6-307, 20-6-704, AND 20-9-311, MCA; REPEALING SECTIONS 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, AND 20-6-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

2013

- 511 *(House Bill No. 687; Mendenhall)* GENERALLY REVISING THE TOBACCO LAWS; REQUIRING ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE TO COMPLY WITH ALL TOBACCO PRODUCT LAWS; APPOINTING THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT OF CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; REVISING LAWS FOR CIGARETTE LICENSING TO INCLUDE LICENSING FOR SELLERS OF ALL TOBACCO PRODUCTS; REQUIRING COMMON CARRIERS TO REPORT SHIPMENTS OF TOBACCO PRODUCTS TO THE DEPARTMENT OF REVENUE; ALLOWING DEPARTMENT OF JUSTICE AGENTS TO ENFORCE BOTH TOBACCO TAX LAWS AND LAWS RELATED TO THE MASTER SETTLEMENT AGREEMENT; REQUIRING SUBJOBBER, TOBACCO PRODUCT VENDORS, AND RETAILERS TO MAINTAIN RECORDS RELATED TO TOBACCO PRODUCTS; ALLOWING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE TO EXAMINE RECORDS RELATED TO TOBACCO PRODUCTS; PROVIDING FOR INDIVIDUAL LIABILITY FOR OFFICERS AND DIRECTORS OF ENTITIES THAT SELL TOBACCO PRODUCTS IN VIOLATION OF TOBACCO LAWS; REQUIRING TOBACCO PRODUCT SELLERS TO REPORT SALES TO MONTANA TAX AUTHORITIES; REQUIRING LABELING OF TOBACCO PRODUCTS SHIPPED INTO MONTANA; REVISING THE PENALTY FOR USING, CONSUMING, OR SELLING A PACK OF CIGARETTES THAT DOES NOT BEAR THE REQUIRED TAX INSIGNIA; ALLOWING SEIZURE OF CONTRABAND TOBACCO PRODUCTS BY DEPARTMENT OF JUSTICE AGENTS; REVISING THE FORFEITURE AND DESTRUCTION PROCEDURES FOR CONTRABAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT RELATE TO CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; GENERALLY REVISING THE PENALTIES FOR VIOLATIONS OF THE TOBACCO PRODUCT TAX LAWS; REQUIRING RETAILERS WHO PURCHASE TOBACCO PRODUCTS ON WHICH THE MONTANA TAXES HAVE NOT BEEN

	PAID TO PAY THE TAXES; PROVIDING FOR A RIGHT TO HEARING ON ACTIONS TAKEN TO ENFORCE THE TOBACCO PRODUCTS TAX LAWS; PROVIDING FOR JURISDICTION FOR TAX VIOLATIONS; AMENDING SECTIONS 16-10-306, 16-11-102, 16-11-103, 16-11-104, 16-11-111, 16-11-114, 16-11-118, 16-11-119, 16-11-120, 16-11-122, 16-11-131, 16-11-132, 16-11-133, 16-11-141, 16-11-142, 16-11-143, 16-11-144, 16-11-145, 16-11-146, 16-11-147, 16-11-148, 16-11-149, 16-11-150, 16-11-155, 16-11-158, 16-11-507, AND 53-6-1201, MCA; REPEALING SECTIONS 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE	2028
512	(<i>House Bill No. 696; Jayne</i>) PROVIDING THAT AN EXPRESS PURPOSE OF THE MONTANA YOUTH COURT ACT IS TO PROVIDE THAT WHENEVER A YOUTH IS REMOVED FROM THE HOME, THE YOUTH IS ENTITLED TO MAINTAIN ETHNIC, CULTURAL, OR RELIGIOUS HERITAGE WHEN APPROPRIATE; AMENDING SECTION 41-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2046
513	(<i>House Bill No. 701; Noennig</i>) GENERALLY REVISING LAWS RELATING TO DECEDENTS' ESTATES, PRINCIPAL AND INCOME ALLOCATIONS, AND TRUSTS; AMENDING SECTIONS 30-10-909, 72-3-1101, 72-4-303, 72-16-906, AND 72-34-442, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	2047
514	(<i>House Bill No. 704; Windy Boy</i>) PROVIDING TIMEFRAMES FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE RESULTS OF SURVEYS AND INFORMAL DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES; AMENDING SECTION 53-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE.	2049
515	(<i>House Bill No. 707; Groesbeck</i>) INCREASING THE COMPENSATION PAID TO FISH, WILDLIFE, AND PARKS LICENSE AGENTS; ALLOWING LICENSE AGENTS TO CHARGE A CONVENIENCE FEE FOR PURCHASES MADE WITH A CREDIT CARD OR A DEBIT CARD; REVISING THE DEFINITION OF "TRANSACTION" TO INCLUDE THE COLLECTION OF ANY DATA OR FEE; AMENDING SECTION 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE	2050
516	(<i>House Bill No. 720; Sinrud</i>) REQUIRING LOCAL GOVERNMENTS TO REVIEW APPLICATIONS FOR DEVELOPMENT AND USE OF PROPERTY UNDER REGULATIONS IN EFFECT AT THE TIME THAT A COMPLETE SITE-SPECIFIC DEVELOPMENT PLAN IS SUBMITTED; AND PROVIDING EXCEPTIONS.	2051
517	(<i>House Bill No. 726; Gutsche</i>) ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH MONTANA CORPORATIONS TO OPERATE DAY REPORTING PROGRAMS TO PROVIDE AN ALTERNATE SENTENCING OPTION AND TO SANCTION PROBATION VIOLATORS; PROVIDING THAT A CONVICTED PERSON PAY A \$50 PRESENTENCE REPORT FEE TO FUND THE ALTERNATE SENTENCING OPTION; AMENDING SECTIONS 46-18-111, 46-18-201, 46-18-225, 46-23-1015, 53-1-203, AND 53-1-501, MCA; AND PROVIDING EFFECTIVE DATES.	2053
518	(<i>House Bill No. 732; Roberts</i>) ADOPTING AND REVISING LAWS TO IMPLEMENT INDIVIDUAL PRIVACY AND TO PREVENT IDENTITY THEFT; REQUIRING A CONSUMER REPORTING AGENCY TO BLOCK INFORMATION ON A REPORT THAT RESULTS FROM A THEFT OF IDENTITY; PROVIDING PRIVACY PROTECTION PROVISIONS FOR CREDIT CARD SOLICITATIONS AND RENEWALS AND TELEPHONE	

ACCOUNTS; PROVIDING PRIVACY PROTECTION FOR BUSINESS RECORDS BY REQUIRING DESTRUCTION OF RECORDS; REQUIRING BUSINESSES TO REPORT A BREACH OF COMPUTER SECURITY; PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTION 31-3-115, MCA; AND PROVIDING EFFECTIVE DATES . . . 2059

- 519 *(House Bill No. 737; McNutt)* CHANGING THE NAME OF A “PHYSICIAN ASSISTANT-CERTIFIED” TO “PHYSICIAN ASSISTANT” AND THE NAME OF A PLAN FOR THE USE OF A PHYSICIAN ASSISTANT BY A PHYSICIAN FROM “UTILIZATION PLAN” TO “SUPERVISION AGREEMENT”; REVISING REQUIREMENTS FOR A SUPERVISING PHYSICIAN; PROHIBITING THE PRACTICE OF MEDICINE BY A PHYSICIAN ASSISTANT WITHOUT A SUPERVISION AGREEMENT; REVISING PROVISIONS FOR RULEMAKING BY THE BOARD OF MEDICAL EXAMINERS; REVISING THE TYPES OF LICENSES ISSUED TO PHYSICIAN ASSISTANTS; REQUIRING A DUTIES AND DELEGATION AGREEMENT AND PROVIDING FOR THE CONTENT OF A SUPERVISION AGREEMENT AND A DUTIES AND DELEGATION AGREEMENT; REVISING AUTHORITY FOR ISSUANCE OF PHYSICIAN ASSISTANT LICENSES AND LICENSE RENEWALS; PROVIDING FOR EXEMPTIONS FROM Licensure; REVISING THE CRITERIA FOR Licensure OF PHYSICIAN ASSISTANTS; REVISING THE AUTHORITY FOR THE AGENCY RELATIONSHIP BETWEEN A PHYSICIAN ASSISTANT AND THE ASSISTANT’S SUPERVISING PHYSICIAN; REVISING THE DEGREE OF SUPERVISION REQUIRED OF THE SUPERVISING PHYSICIAN; REVISING THE PRESCRIPTION AND DISPENSING AUTHORITY OF A PHYSICIAN ASSISTANT; REMOVING THE PROHIBITION AGAINST A PHYSICIAN ASSISTANT PERFORMING AN ABORTION; PROVIDING FOR THE PRACTICE OF A PHYSICIAN ASSISTANT AND A SUPERVISING PHYSICIAN DURING A DISASTER OR EMERGENCY; AMENDING SECTIONS 2-15-1731, 33-22-111, 33-22-114, 37-3-103, 37-8-103, 37-20-101, 37-20-103, 37-20-104, 37-20-202, 37-20-203, 37-20-301, 37-20-302, 37-20-303, 37-20-401, 37-20-402, 37-20-403, 37-20-404, 37-20-405, 37-20-406, 39-71-116, 41-1-401, 46-4-114, 50-5-101, 50-5-216, 50-16-201, 50-19-101, 50-20-109, 52-5-108, AND 53-6-101, MCA; AND REPEALING SECTION 37-20-201, MCA. 2065
- 520 *(House Bill No. 738; Kaufmann)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE AN ADVISORY COMMISSION ON PROVIDER RATES AND SERVICES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR THE DUTIES, MEMBERSHIP, AND ADMINISTRATION OF THE COMMISSION; REQUIRING THE COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS CONCERNING SERVICES PROVIDED BY CONTRACT TO CHILDREN AND ADULTS IN A COMMUNITY SETTING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE COSTS OF THOSE SERVICES, AND REIMBURSEMENT RATES PAID TO THE CONTRACT PROVIDERS OF THOSE SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSIST THE COMMISSION; PROVIDING FOR THE PRIVACY OF CERTAIN CONTRACT INFORMATION; AND REQUIRING THE COMMISSION TO MAKE FINDINGS, RECOMMENDATIONS, AND REPORTS 2091
- 521 *(House Bill No. 747; Driscoll)* LIMITING SCHOOL DISTRICT AND PUBLIC POSTSECONDARY INSTITUTION LIABILITY FOR CIVIL DAMAGES RESULTING FROM STUDENT LABOR ON A CONSTRUCTION PROJECT AS PART OF A PUBLIC EDUCATION

	PROGRAM IF NOTICE OF THE STUDENT LABOR IS GIVEN AT THE TIME OF TRANSFER OF THE PROPERTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	2094
522	<i>(House Bill No. 748; Wells)</i> AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR STATE MATCHING FUNDS FOR FEDERAL WATER RESOURCE PROJECTS; PROVIDING FOR DEBT SERVICE PAYMENTS FROM AVAILABLE AMOUNTS IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2095
523	<i>(House Bill No. 749; Ripley)</i> INCREASING, IN BOTH FISCAL YEAR 2006 AND FISCAL YEAR 2007, THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE	2096
524	<i>(House Bill No. 756; Gutsche)</i> ENCOURAGING THE PRODUCTION AND USE OF BIODIESEL THROUGH TAX INCENTIVES; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO CRUSH OILSEED CROPS FOR PURPOSES OF BIODIESEL PRODUCTION; PROVIDING A TAX CREDIT TO A FACILITY PRODUCING BIODIESEL BASED UPON THE COST OF CONSTRUCTING AND EQUIPPING THE FACILITY; PROVIDING A TAX INCENTIVE FOR THE PRODUCTION OF BIODIESEL BASED UPON GALLONS OF PRODUCTION; PROVIDING THAT THE TAX INCENTIVE BE PAID OUT OF THE GENERAL FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.	2097
525	<i>(House Bill No. 776; Raser)</i> PROVIDING TAX INCENTIVES FOR BIODIESEL FUEL; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO BLEND BIODIESEL MADE FROM MONTANA PRODUCTS WITH DIESEL; PROVIDING FOR THE RECAPTURE OF THE CREDIT UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF TAX CREDITS CLAIMED; PROVIDING A TAX REFUND TO DISTRIBUTORS AND OWNERS OR OPERATORS OF MOTOR FUEL OUTLETS FOR SPECIAL FUEL TAXES PAID ON BIODIESEL; PROVIDING THAT THE SPECIAL FUEL TAX REFUNDS BE REIMBURSED FROM THE STATE GENERAL FUND; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF REFUNDS CLAIMED; ELIMINATING THE PROVISION TAXING BIODIESEL AT 85 PERCENT OF THE SPECIAL FUEL TAX RATE; REMOVING THE REQUIREMENT THAT TAX LABELS BE PLACED ON BIODIESEL PUMPS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-301, 15-70-304, 15-70-341, AND 17-7-502, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-370, MCA, AND SECTIONS 7 AND 9, CHAPTER 568, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.	2101
526	<i>(House Bill No. 782; McNutt)</i> PROVIDING THAT ISSUE REMARKS MUST BE FINALLY RESOLVED BEFORE ISSUANCE OF A FINAL DECREE; PROVIDING THAT THE ATTORNEY GENERAL MAY INTERVENE IN THE PROCEEDINGS BEFORE THE WATER COURT ON ISSUE REMARKS THAT HAVE NOT BEEN OTHERWISE	

- RESOLVED; PROVIDING THAT ISSUE REMARKS ARE EVIDENCE TO BE WEIGHED AGAINST THE PRIMA FACIE STATUS OF A WATER RIGHT CLAIM; PROVIDING THAT RESOLVING OBJECTIONS IS OF HIGHER IMPORTANCE THAN RESOLVING ISSUE REMARKS UNLESS OTHERWISE DETERMINED BY THE CHIEF WATER JUDGE; AMENDING SECTIONS 85-2-232, 85-2-233, 85-2-234, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2118
- 527 (*House Bill No. 790; Peterson*) REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT A STUDY ON SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING; PROVIDING FOR A SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL; PROVIDING THAT THE SUBCOMMITTEE SHALL, IF APPROPRIATE, SEPARATE THE STUDY INTO TWO STUDIES; PROVIDING FOR AT-LARGE MEMBERS ON THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-5-211 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 2125
- 528 (*House Bill No. 802; Olson*) ELIMINATING THE ANNUAL PERMIT SURCHARGE FEE FOR VIDEO GAMBLING MACHINES; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2130
- 529 (*Senate Bill No. 40; McGee*) ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION CONTAINING THE CONSENT OF ALL OWNERS OF PROPERTY TO BE INCLUDED IN THE DISTRICT; EXEMPTING THE RESOLUTION OF INTENTION TO CREATE THE DISTRICT AND THE RESOLUTION TO CREATE THE DISTRICT FROM NOTICE, HEARING, AND PROTEST PROVISIONS IF CREATION OF THE DISTRICT IS THE RESULT OF THE PETITION; AND AMENDING SECTIONS 7-12-2102, 7-12-2105, 7-12-2109, AND 7-12-2113, MCA 2131
- 530 (*Senate Bill No. 41; Keenan*) INCORPORATING FUNDING PRINCIPLES FOR THE PURPOSES OF THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTIONS 53-6-101 AND 53-21-139, MCA 2133
- 531 (*Senate Bill No. 48; Harrington*) REMOVING THE CLASS EIGHT PROPERTY TAX PROVISION THAT WOULD HAVE PHASED OUT THE TAXATION OF CLASS EIGHT PROPERTY CONTINGENT ON A CERTAIN INCREASE IN STATE WAGES AND SALARIES; INCREASING THE CAP ON THE EXEMPT AGGREGATE MARKET VALUE OF CLASS EIGHT PROPERTY FROM \$5,000 TO \$20,000; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA, SECTION 27, CHAPTER 285, LAWS OF 1999, SECTION 31, CHAPTER 285, LAWS OF 1999, AND SECTION 5, CHAPTER 577, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2136
- 532 (*Senate Bill No. 68; Balyeat*) GENERALLY RECODIFYING THE LAWS EXEMPTING CERTAIN PROPERTY FROM TAXATION; AND AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-6-204, 15-6-205, 15-6-207, 15-6-220, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA 2143
- 533 (*Senate Bill No. 75; Harrington*) CLARIFYING THE PROCEDURE WHEN AN APPLICANT BEFORE A COUNTY TAX APPEAL BOARD HAS THE APPLICATION AUTOMATICALLY GRANTED BECAUSE OF THE COUNTY TAX APPEAL BOARD'S REFUSAL OR FAILURE TO HEAR

	THE APPEAL; PROVIDING NOTICE OF THE ACTION TO THE DEPARTMENT OF REVENUE, STATE TAX APPEAL BOARD, AND AFFECTED MUNICIPAL CORPORATIONS; AUTHORIZING AN APPEAL TO THE STATE TAX APPEAL BOARD BY THE DEPARTMENT OF REVENUE OR A MUNICIPAL CORPORATION; AND AMENDING SECTIONS 15-15-103 AND 15-15-104, MCA	2159
534	(<i>Senate Bill No. 81; Stapleton</i>) REDUCING THE NUMBER OF DAYS THAT A MEMBER OF THE MONTANA NATIONAL GUARD MUST BE ON ACTIVE DUTY BEFORE BEING ELIGIBLE FOR RELIEF UNDER THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; AMENDING SECTION 10-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2160
535	(<i>Senate Bill No. 85; Squires</i>) PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF TO FUND THE MONTANA END-STAGE RENAL DISEASE PROGRAM; ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN APPLICABILITY DATE AND A CONTINGENT TERMINATION DATE	2161
536	(<i>Senate Bill No. 87; Elliott</i>) CLARIFYING THAT PROPERTY TAXES OR FEES ON CENTRALLY ASSESSED PROPERTY MUST BE PAID UNDER PROTEST IN ORDER FOR THE TAXPAYER TO RECEIVE A REFUND OR CREDIT OF THE PROPERTY TAXES; REQUIRING THAT THE PROTESTED PAYMENT BE REPORTED TO THE DEPARTMENT OF REVENUE; ESTABLISHING A CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND FOR THE DEPOSIT OF 50 PERCENT OF THE PROTESTED STATE PROPERTY TAXES HELD IN RESERVE; PROVIDING THAT THE DEPARTMENT OF REVENUE AND NOT THE STATE TREASURER RECEIVE AND DISBURSE PROTESTED PROPERTY TAX PAYMENTS; PROVIDING FOR THE DISBURSEMENT OF FUNDS UPON COMPLETION OF A PROTEST ACTION; TRANSFERRING FROM THE GENERAL FUND TO THE CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND 50 PERCENT OF THE MONEY RECEIVED BY THE DEPARTMENT OF REVENUE FROM PAYMENTS OF PROPERTY TAXES OR FEES UNDER PROTEST; AMENDING SECTIONS 15-1-402 AND 15-23-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2162
537	(<i>Senate Bill No. 133; Mangan</i>) CREATING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; PROVIDING CONTINGENT, DEFERRED TAX CREDITS TO INVESTORS OR THEIR ASSIGNEES; ESTABLISHING AND PROVIDING THE DUTIES OF A MONTANA EQUITY CAPITAL INVESTMENT BOARD; PROVIDING FOR PRIVATE SECTOR ORGANIZATION AND MANAGEMENT OF THE MONTANA EQUITY FUND; PROVIDING FOR REGISTRATION AND VERIFICATION OF TAX CREDIT USE OR TRANSFER; REQUIRING AN ANNUAL FEE FOR THE DESIGNATED INVESTOR GROUP; SETTING TERMS FOR TAX CREDIT REDEMPTION; SETTING CONTRACT TERMS FOR DESIGNATED INVESTOR GROUP INVESTMENTS AND THE DISTRIBUTION OF PROCEEDS; PROVIDING FOR TRANSFER AND TERMINATION OF THE MONTANA EQUITY FUND AND MONTANA EVERGREEN FUND; RESTRICTING CERTAIN INVESTMENTS; REQUIRING AN ANNUAL AUDIT AND AN ANNUAL REPORT; MAKING INVESTMENT IN THE MONTANA EQUITY FUND A PERMISSIBLE INVESTMENT FOR CERTAIN ENTITIES; REQUIRING AN APPLICATION FOR A SECURITIES EXEMPTION; INCORPORATING EQUITY CAPITAL INVESTMENT INTO STATE POLICY; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE	2166

- 538 (*Senate Bill No. 217; Larson*) REVISING APPRENTICE TRAINING LAWS TO ESTABLISH AN APPRENTICE WAGE RATE TIED TO THE STANDARD PREVAILING WAGE RATE FOR CONSTRUCTION SERVICES FOR A PREVAILING WAGE RATE DISTRICT; EXCLUDING CERTAIN APPRENTICE WAGES; DEFINING "APPRENTICE"; AMENDING SECTIONS 18-2-411, 39-6-101, AND 39-6-106, MCA; REPEALING ARM 24.21.414; AND PROVIDING A DELAYED EFFECTIVE DATE 2174
- 539 (*Senate Bill No. 222; Barkus*) TRANSFERRING THE RESPONSIBILITY FOR COLLECTING AND ISSUING REFUNDS FOR LOCAL OPTION MOTOR FUEL EXCISE TAX FROM THE DEPARTMENT OF TRANSPORTATION TO COUNTY TREASURERS; REQUIRING RETAIL SELLERS OF GASOLINE IN COUNTIES IN WHICH THE TAX IS IMPOSED TO RENDER MONTHLY STATEMENTS TO THE COUNTY TREASURER; REQUIRING A COUNTY THAT IMPOSES THE TAX TO ESTABLISH A MOTOR FUEL EXCISE TAX ACCOUNT FOR DEPOSIT OF THE TAX REVENUE; PROVIDING METHODS FOR APPORTIONMENT OF THE REVENUE; AMENDING SECTIONS 7-14-301, 7-14-302, 7-14-303, AND 7-14-304, MCA; AND PROVIDING AN EFFECTIVE DATE 2177
- 540 (*Senate Bill No. 271; Elliott*) ALLOWING FOR AN ADJUSTMENT OF THE GUARANTEED TAX BASE AID PAYMENT TO A SCHOOL DISTRICT AFFECTED BY A TAX PROTEST IN THE EVENT THAT THE FINAL TAXABLE VALUATION OF THE SCHOOL DISTRICT IS REDUCED AS A RESULT OF THE RESOLUTION OF THE PROTEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2179
- 541 (*Senate Bill No. 278; Black*) CREATING A SPECIAL PRACTICE PERMIT FOR NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS; PROVIDING CRITERIA FOR OBTAINING THE SPECIAL PRACTICE PERMIT; REQUIRING REGISTRATION WITH THE BOARD OF PUBLIC ACCOUNTANTS; PROHIBITING THE PRACTICE OF PUBLIC ACCOUNTING BY NONRESIDENTS WITHOUT REGISTRATION; AND AUTHORIZING THE BOARD TO ADOPT RULES IMPLEMENTING PROCEDURES AND FEES FOR SPECIAL PRACTICE PERMITS AND REGISTRATION BY NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS 2180
- 542 (*Senate Bill No. 285; Story*) GENERALLY REVISING THE MOTOR VEHICLE LAWS; REORGANIZING AND RECODIFYING DEFINITIONS; REPLACING ALLOCATIONS OF MOTOR VEHICLE REVENUE TO SPECIAL ACCOUNTS WITH A PERCENTAGE OF THE REVENUE COLLECTED RATHER THAN AN AMOUNT PER VEHICLE; PROVIDING FOR THE DIRECT DEPOSIT OF THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR STATE PARKS; REVISING THE TRANSFER OF FUNDS BY COUNTY TREASURERS TO THE STATE; REQUIRING THE TRANSFER OF VEHICLE AND VESSEL TRANSACTION FEES TO THE DEPARTMENT OF JUSTICE BEGINNING ON JULY 1, 2006; REVISING AND CLARIFYING REGISTRATION FEES FOR WATERCRAFT, SNOWMOBILES, AND VEHICLES; COMBINING FEES IN LIEU OF TAX AND REGISTRATION FEES; AMENDING SECTIONS 10-2-112, 10-3-801, 15-1-101, 15-1-122, 15-1-504, 15-6-138, 15-6-201, 15-6-215, 15-8-201, 15-8-202, 15-15-201, 15-16-202, 15-24-301, 15-30-121, 15-50-207, 15-68-101, 20-9-331, 20-9-333, 20-9-360, 23-1-128, 23-2-512, 23-2-513, 23-2-515, 23-2-519, 23-2-601, 23-2-614, 23-2-616, 23-2-619, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-804, 23-2-809, 23-2-818, 30-11-701, 33-23-204, 37-72-101, 45-5-205, 61-1-101, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-110,

	61-3-201, 61-3-202, 61-3-204, 61-3-205, 61-3-206, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-216, 61-3-217, 61-3-218, 61-3-219, 61-3-220, 61-3-221, 61-3-222, 61-3-223, 61-3-224, 61-3-301, 61-3-302, 61-3-303, 61-3-311, 61-3-312, 61-3-313, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-318, 61-3-321, 61-3-322, 61-3-323, 61-3-324, 61-3-325, 61-3-331, 61-3-332, 61-3-333, 61-3-334, 61-3-335, 61-3-342, 61-3-345, 61-3-401, 61-3-403, 61-3-404, 61-3-411, 61-3-412, 61-3-413, 61-3-421, 61-3-422, 61-3-423, 61-3-425, 61-3-431, 61-3-446, 61-3-448, 61-3-456, 61-3-458, 61-3-460, 61-3-465, 61-3-467, 61-3-468, 61-3-474, 61-3-479, 61-3-480, 61-3-481, 61-3-501, 61-3-503, 61-3-506, 61-3-507, 61-3-509, 61-3-520, 61-3-526, 61-3-529, 61-3-535, 61-3-537, 61-3-562, 61-3-603, 61-3-604, 61-3-607, 61-3-701, 61-3-702, 61-3-703, 61-3-704, 61-3-707, 61-3-708, 61-3-709, 61-3-711, 61-3-712, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-732, 61-3-733, 61-3-736, 61-3-737, 61-4-101, 61-4-102, 61-4-104, 61-4-109, 61-4-110, 61-4-111, 61-4-112, 61-4-113, 61-4-120, 61-4-121, 61-4-122, 61-4-123, 61-4-125, 61-4-129, 61-4-131, 61-4-141, 61-4-143, 61-4-202, 61-4-204, 61-4-208, 61-4-301, 61-4-302, 61-4-306, 61-4-307, 61-4-310, 61-4-404, 61-4-501, 61-4-503, 61-4-504, 61-4-505, 61-4-506, 61-4-511, 61-4-519, 61-4-525, 61-5-104, 61-5-112, 61-5-119, 61-5-121, 61-5-208, 61-6-102, 61-6-301, 61-8-102, 61-8-201, 61-8-210, 61-8-310, 61-8-336, 61-8-341, 61-8-354, 61-8-371, 61-8-380, 61-8-383, 61-8-384, 61-8-401, 61-8-605, 61-8-704, 61-8-713, 61-8-801, 61-9-102, 61-9-103, 61-9-226, 61-9-302, 61-9-304, 61-9-321, 61-9-402, 61-9-405, 61-9-406, 61-9-412, 61-9-415, 61-9-426, 61-10-102, 61-10-104, 61-10-123, 61-10-141, 61-10-148, 61-10-206, 61-10-225, 61-11-203, 61-12-101, 61-12-102, 61-13-103, 75-10-532, 76-2-202, 76-2-302, 87-2-803, AND 87-3-101, MCA; REPEALING SECTIONS 23-2-516, 23-2-517, 23-2-518, 23-2-626, 23-2-803, 23-2-817, 61-1-102, 61-1-103, 61-1-104, 61-1-105, 61-1-106, 61-1-107, 61-1-108, 61-1-109, 61-1-110, 61-1-111, 61-1-112, 61-1-113, 61-1-114, 61-1-115, 61-1-116, 61-1-117, 61-1-118, 61-1-119, 61-1-120, 61-1-121, 61-1-123, 61-1-124, 61-1-125, 61-1-126, 61-1-127, 61-1-128, 61-1-129, 61-1-130, 61-1-131, 61-1-132, 61-1-133, 61-1-134, 61-1-135, 61-1-136, 61-1-137, 61-1-138, 61-1-139, 61-1-140, 61-1-141, 61-1-142, 61-1-201, 61-1-202, 61-1-203, 61-1-204, 61-1-205, 61-1-206, 61-1-207, 61-1-208, 61-1-209, 61-1-210, 61-1-211, 61-1-212, 61-1-301, 61-1-302, 61-1-303, 61-1-304, 61-1-305, 61-1-306, 61-1-307, 61-1-308, 61-1-309, 61-1-310, 61-1-311, 61-1-313, 61-1-314, 61-1-315, 61-1-316, 61-1-317, 61-1-318, 61-1-319, 61-1-320, 61-1-321, 61-1-401, 61-1-402, 61-1-403, 61-1-404, 61-1-405, 61-1-406, 61-1-407, 61-1-408, 61-1-409, 61-1-410, 61-1-411, 61-1-412, 61-1-413, 61-1-414, 61-1-415, 61-1-501, 61-1-502, 61-1-503, 61-1-504, 61-1-505, 61-1-506, 61-1-507, 61-1-508, 61-1-509, 61-1-510, 61-1-511, 61-1-512, 61-1-513, 61-1-514, 61-1-515, 61-1-601, 61-1-602, 61-1-603, 61-1-604, 61-3-521, 61-3-522, 61-3-523, 61-3-527, 61-3-528, 61-3-530, 61-3-560, AND 61-3-561, MCA; AND PROVIDING EFFECTIVE DATES	2181
543	(<i>Senate Bill No. 296; Black</i>) PROVIDING AN ALTERNATIVE METHOD FOR THE OWNER OF A PARCEL OF LAND OF 20 ACRES OR MORE BUT LESS THAN 160 ACRES TO HAVE THE PARCEL VALUED, ASSESSED, AND TAXED AS AGRICULTURAL LAND UNDER CERTAIN CONDITIONS; AMENDING SECTION 15-7-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . .	2363
544	(<i>Senate Bill No. 326; Laslovich</i>) REVISING THE LAW ON EXCAVATION NEAR UNDERGROUND FACILITIES; PROVIDING FOR SPECIFIC DAMAGE FEES; SETTING A DEADLINE FOR PAYMENT OF FEES; ALLOWING FOR JUDICIAL REVIEW OF FEES LEVIED; DESIGNATING THE USE OF FEES COLLECTED; PROVIDING FOR	

MONTANA SESSION LAWS 2005

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	THE MAINTENANCE OF DAMAGE INCIDENT HISTORIES; AND AMENDING SECTIONS 69-4-501 AND 69-4-505, MCA.	2365
545	(<i>Senate Bill No. 345; Mangan</i>) REVISING THE LAW RELATING TO THE URBAN RENEWAL AND TAX INCREMENT FINANCING; ALLOWING THE GOVERNING BODY OF A MUNICIPALITY TO RETAIN CERTAIN LOAN FUNDS RELATED TO A TERMINATED TAX INCREMENT FINANCING PROVISION FOR THE PURPOSES OF THE URBAN RENEWAL PLAN; PROVIDING FOR AGREEMENTS ESTABLISHING A MINIMUM VALUE FOR CERTAIN PROPERTY IN AN URBAN RENEWAL AREA; ALLOWING FOR AN ADJUSTMENT TO BASE TAXABLE VALUE; ESTABLISHING A TAX DEFICIENCY LIEN; AMENDING SECTIONS 7-15-4292, 7-15-4293, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE.	2368
546	(<i>Senate Bill No. 407; Grimes</i>) REVISING THE MINOR IN POSSESSION LAW; AND AMENDING SECTION 45-5-624, MCA	2372
547	(<i>Senate Bill No. 423; Laslovich</i>) REVISING ALCOHOL IGNITION INTERLOCK DEVICE LAWS AND LAWS GOVERNING ISSUANCE OF CERTAIN DRIVER'S LICENSES AFTER REVOCATION; REQUIRING CERTAIN DRIVER'S LICENSES TO CONVEY THE TERM OF PROBATION RESTRICTIONS IMPOSED ON THE LICENSEE FOR OPERATION OF A MOTOR VEHICLE; REQUIRING AN ALCOHOL IGNITION INTERLOCK DEVICE PROVIDER TO INCLUDE IN A LEASE AGREEMENT A WARNING REGARDING TAMPERING WITH OR MISUSE OF THE DEVICE; REMOVING CERTAIN CONDITIONS UNDER WHICH A COURT MAY RESTRICT A PERSON TO DRIVING ONLY A MOTOR VEHICLE WITH AN IGNITION INTERLOCK DEVICE; AND AMENDING SECTIONS 61-5-208, 61-8-441, AND 61-8-442, MCA	2375
548	(<i>Senate Bill No. 428; Stapleton</i>) PROVIDING FOR A STATEWIDE 2-1-1 TELEPHONE NUMBER FOR ACCESS AND REFERRAL TO COMMUNITY DISASTER, EMERGENCY, SAFETY, HEALTH, AND HUMAN SERVICES INFORMATION; PROVIDING FOR A MONTANA 2-1-1 COMMUNITY COALITION TO SERVE IN AN ADVISORY CAPACITY; PROVIDING THAT ANY AGENCY THAT SEEKS A NEW PUBLIC INFORMATION TELEPHONE LINE OR HOTLINE SHALL CONSULT WITH THE DEPARTMENT FOR USE OF THE 2-1-1 SYSTEM; PROVIDING FOR SERVICE PROVIDERS AND SCOPE OF SERVICE; PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR ELIGIBLE ACTIVITIES; REQUIRING BIENNIAL REPORTS TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE	2378
549	(<i>Senate Bill No. 432; Brueggeman</i>) AMENDING THE FAMILY EDUCATION SAVINGS ACT TO COMPLY WITH CERTAIN FEDERAL SECURITIES REQUIREMENTS; ESTABLISHING A FAMILY EDUCATION SAVINGS TRUST WITH PARTICIPATING TRUST ACCOUNTS GOVERNING ACCOUNTS; ESTABLISHING THE ROLE OF THE BOARD OF REGENTS AND FINANCIAL INSTITUTIONS; ESTABLISHING A TRANSITION TO THE ADMINISTRATION UNDER THE TRUST; PROVIDING FOR INDIVIDUAL TRUST ACCOUNTS WITH A FINANCIAL INSTITUTION IF THE BOARD DETERMINES THAT CERTIFICATES OF DEPOSITS AND SAVINGS ACCOUNTS ARE NOT SEPARATELY INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION UNDER THE FAMILY EDUCATION TRUST; AMENDING SECTIONS 15-62-103, 15-62-201, 15-62-203, AND 20-25-902, MCA.	2382
550	(<i>Senate Bill No. 442; Cooney</i>) REMOVING THE DEPARTMENT OF REVENUE'S AUTHORITY TO ESTABLISH A FEE TO RECOVER COSTS	

	ASSOCIATED WITH THE POINTS REPLACEMENT SYSTEM; PROVIDING A VOIDNESS PROVISION CONTINGENT ON REPAYMENT OF THE LOAN THROUGH STATE GENERAL FUND MONEY; AMENDING SECTIONS 15-1-501 AND 17-5-2001, MCA; REPEALING SECTION 15-1-141, MCA; AND PROVIDING AN EFFECTIVE DATE	2392
551	(<i>Senate Bill No. 477; Elliott</i>) REQUIRING THE DEPARTMENT OF CORRECTIONS TO ADOPT RULES ESTABLISHING A PER DIEM RATE FOR COMPENSATION THAT MUST BE PAID TO A REGIONAL CORRECTIONAL FACILITY FOR THE CONFINEMENT OF PERSONS IN THE STATE CORRECTIONAL FACILITY PORTION OF THE REGIONAL CORRECTIONAL FACILITY; AMENDING SECTION 53-30-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	2396
552	(<i>Senate Bill No. 486; Cocchiarella</i>) REVISING THE LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT BROKERS; CLARIFYING THAT A LIFE INSURANCE PRODUCER MAY ACT AS A VIATICAL SETTLEMENT BROKER; CLARIFYING REQUIREMENTS FOR ENTERING INTO A VIATICAL SETTLEMENT CONTRACT; CLARIFYING THE COMMISSIONER OF INSURANCE'S RULEMAKING AUTHORITY WITH RESPECT TO A VIATICAL SETTLEMENT PROVIDER'S PAYMENTS TO AN INSURED THAT IS NOT TERMINALLY OR CHRONICALLY ILL; AND AMENDING SECTIONS 33-2-708, 33-20-1303, 33-20-1313, AND 33-20-1315, MCA.	2397
553	(<i>Senate Bill No. 499; Keenan</i>) REVISING LAWS PERTAINING TO THE PUBLIC MENTAL HEALTH SYSTEM; AMENDING SERVICE AREA AUTHORITY DEFINITIONS AND DUTIES; AND AMENDING SECTIONS 53-21-1001, 53-21-1002, 53-21-1006, AND 53-21-1007, MCA.	2402
554	(<i>Senate Bill No. 524; Cooney</i>) DELAYING BY 1 YEAR THE REVALUATION OF ALL TAXABLE PROPERTY WITHIN CLASSES THREE, FOUR, AND TEN; AND AMENDING SECTION 15-7-111, MCA	2406
555	(<i>House Bill No. 218; Olson</i>) REVISING THE LAWS RELATING TO MOSQUITO CONTROL DISTRICTS; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A MOSQUITO CONTROL DISTRICT BY ADOPTING A RESOLUTION OF INTENT; REDUCING THE PERCENTAGE OF ELECTORS OR PROPERTY OWNERS REQUIRED TO SUBMIT A PETITION FOR THE CREATION OF A MOSQUITO CONTROL DISTRICT; GIVING A BOARD OF COUNTY COMMISSIONERS DISCRETION TO CREATE A MOSQUITO CONTROL DISTRICT; AMENDING SECTIONS 7-22-2403, 7-22-2408, 7-22-2409, AND 7-22-2442, MCA; REPEALING SECTIONS 7-22-2404, 7-22-2406, AND 7-22-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2407
556	(<i>House Bill No. 272; Lambert</i>) PROVIDING 50 HALF-PRICED DEER AND ANTELOPE LICENSES TO CERTAIN DISABLED COMBAT VETERANS; EXCEPTING CLASS A-3, A-4, B-7, AND B-8 AND SPECIAL ANTELOPE LICENSES ISSUED TO CERTAIN DISABLED COMBAT VETERANS FROM NUMERICAL LICENSE LIMITS; AND AMENDING SECTIONS 87-2-506, 87-2-706, AND 87-2-803, MCA	2409
557	(<i>House Bill No. 367; Parker</i>) GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF	

- A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE 2411
- 558 *(House Bill No. 529; Kaufmann)* PROVIDING FOR A CHILD SUPPORT PASS-THROUGH PAYMENT AND INCOME DISREGARD FOR THOSE ON TEMPORARY ASSISTANCE FOR NEEDY FAMILIES; AND PROVIDING AN EFFECTIVE DATE. 2416
- 559 *(Senate Bill No. 276; Bales)* REVISING THE TAXATION OF BENTONITE; EXEMPTING BENTONITE FROM NET PROCEEDS PROPERTY TAXATION BEGINNING WITH TAX YEAR 2004; IMPOSING A BENTONITE PRODUCTION TAX ON THE TONS OF BENTONITE PRODUCED BEGINNING WITH TAX YEAR 2005; EXEMPTING FROM TAXATION THE FIRST 20,000 TONS OF BENTONITE PRODUCED IN A YEAR; PROVIDING FOR A DECLINING SCHEDULE OF TAXATION OF BENTONITE DEPENDING ON THE NUMBER OF TONS PRODUCED; REQUIRING THE SEMIANNUAL PAYMENT OF THE TAX; PROVIDING FOR AN INFLATION ADJUSTMENT TO THE TAX SCHEDULE BEGINNING WITH TAX YEAR 2010; IMPOSING A 15% TAX RATE ON THE GROSS VALUE OF ROYALTIES; PROVIDING FOR THE DISTRIBUTION OF BENTONITE PRODUCTION TAXES; PROVIDING FOR A VALUE TO BE USED FOR COUNTY CLASSIFICATION PURPOSES AND FOR LOCAL GOVERNMENT DEBT LIMITS AND OTHER BONDING PROVISIONS; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE TAX; AMENDING SECTIONS 15-6-131, 15-6-208, 15-23-101, 15-23-501, AND 15-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2417
- 560 *(House Bill No. 5; Wells)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2007; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF ONE-TIME FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING FOR THE FACILITATION OF PRIVATE EFFORTS TO CONSTRUCT A CHAPEL AT THE MONTANA STATE HOSPITAL AND ALLOWING THE DEPARTMENT OF ADMINISTRATION TO WAIVE REQUIREMENTS PERTAINING TO BIDDING AND BONDING FOR STATE BUILDING PROJECTS IN TITLE 18, MCA, LABOR REQUIREMENTS IN TITLE 18, MCA, AND CONTRACTOR REGISTRATION IN TITLE 39, MCA; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO WAIVE REQUIREMENTS PERTAINING TO PUBLIC BIDS AND THE DEPOSIT OF STATE LAND SALE PROCEEDS FOR THE SALE OF THE JOCKO FISH HATCHERY; REMOVING THE AUTHORITY FOR THE CONSTRUCTION OF THE LIFE SCIENCES BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING REVERSION REQUIREMENTS RELATED TO THE JOURNALISM BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING RESTRICTIONS RELATING TO THE LAW BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING CERTAIN RESTRICTIONS RELATING TO THE JOURNALISM BUILDING AT THE UNIVERSITY OF MONTANA; AMENDING SECTIONS 87-1-209 AND 87-1-601, MCA, SECTION 2, CHAPTER 557, LAWS OF 1999, AND SECTION 2, CHAPTER 573, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2425
- 561 *(Senate Bill No. 107; Smith)* CLARIFYING WHEN SPECIFIC GROUND WATER MANAGEMENT PLANS MUST OR MAY BE DEVELOPED AND

	IMPLEMENTED; ALLOWING THE DEPARTMENT OF AGRICULTURE TO INITIATE EDUCATIONAL PROGRAMS ABOUT AGRICULTURAL MANAGEMENT IN AN EFFORT TO PRECLUDE THE NEED FOR DEVELOPING SPECIFIC GROUND WATER MANAGEMENT PLANS IN THE FUTURE; AMENDING SECTIONS 80-15-212 AND 80-15-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2441
562	(<i>Senate Bill No. 114; Tester</i>) CLARIFYING LANGUAGE RELATING TO INSURANCE OFFENSES; AND AMENDING SECTIONS 33-2-101, 33-2-104, AND 33-18-401, MCA	2443
563	(<i>Senate Bill No. 115; Tester</i>) CREATING CLASS FOURTEEN PROPERTY TO INCLUDE WIND GENERATION FACILITIES; PROVIDING A DEFINITION OF "WIND GENERATION FACILITIES"; PROVIDING THAT A FACILITY IS NOT ELIGIBLE TO BE CLASSIFIED AS CLASS FOURTEEN PROPERTY UNLESS THE FACILITY PAID THE STANDARD PREVAILING RATE OF WAGES FOR HEAVY CONSTRUCTION DURING THE CONSTRUCTION PHASE; TAXING CLASS FOURTEEN PROPERTY AT 3 PERCENT OF ITS MARKET VALUE; ALLOWING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY THE CONSTRUCTION OF A COMMERCIAL WIND GENERATION FACILITY; ALLOWING INTERLOCAL IMPACT AGREEMENTS; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-201, 15-24-3005, 15-24-3006, AND 15-24-3007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES	2444
564	(<i>Senate Bill No. 139; Esp</i>) ELIMINATING THE REQUIREMENT TO REGISTER A MONTANA DISTRICT COURT ORDER WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PRIOR TO COMMENCING THE ADMINISTRATIVE MODIFICATION PROCESS; CLARIFYING THE CRITERIA FOR REVIEW IN THE ABSENCE OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES; CLARIFYING THE REMEDY IF A PARTY REFUSES TO PRODUCE THE REQUESTED FINANCIAL INFORMATION; ELIMINATING A MANDATORY MEDIATION SESSION AND CERTAIN SERVICE OF PROCESS REQUIREMENTS; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-234, 40-5-248, 40-5-271, 40-5-272, 40-5-273, 40-5-277, AND 40-6-116, MCA; REPEALING SECTION 40-5-276, MCA; AND PROVIDING AN EFFECTIVE DATE.	2455
565	(<i>Senate Bill No. 154; Cobb</i>) REVISING THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM; PROVIDING FOR A LIMIT TO THE ADMINISTRATIVE COSTS AND RESERVES OF ANY ENTITY UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADMINISTER THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM; CLARIFYING THAT THE DEPARTMENT MAY EITHER ADMINISTER THE PROGRAM DIRECTLY OR CONTRACT FOR ADMINISTRATION OF THE PROGRAM WITH AN INSURANCE COMPANY OR OTHER ENTITY; PROVIDING FOR THE RETURN OF EXCESS PREMIUM HELD IN RESERVE; PROVIDING FOR AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO DEPOSIT EXCESS PREMIUM AND UNEXPENDED APPROPRIATIONS FOR THE PURPOSES OF THE PROGRAM; AMENDING SECTIONS 17-7-304 AND 53-4-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE	2473
566	(<i>Senate Bill No. 167; Mangan</i>) AUTHORIZING THE CREATION OF TECHNOLOGY DISTRICTS; PROVIDING THAT A DISTRICT IS	

	CREATED TO ENCOURAGE DEVELOPMENT OF TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS; ESTABLISHING THAT TENANTS OF THE DISTRICT BE PRIMARY SECTOR COMPANIES; ESTABLISHING THAT A TECHNOLOGY DISTRICT MAY USE TAX INCREMENT FINANCING AND ISSUE BONDS FROM TAX INCREMENTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4285, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4301, AND 7-15-4304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2476
567	(<i>Senate Bill No. 175; Cromley</i>) ALLOWING THE USE OF ZONING CLASSIFICATION AS ANOTHER METHOD FOR ASSESSING COSTS WITHIN A STREET MAINTENANCE DISTRICT; AND AMENDING SECTION 7-12-4422, MCA	2482
568	(<i>Senate Bill No. 212; Esp</i>) CLARIFYING THE DISTINCTION BETWEEN DEDICATION AND DISTRIBUTION FOR FEDERAL MINERAL LEASING FUNDS; AMENDING SECTION 17-3-240, MCA; AND PROVIDING AN EFFECTIVE DATE.	2483
569	(<i>Senate Bill No. 213; Story</i>) EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR INVESTMENT IN PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL; AMENDING SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, SECTION 1, CHAPTER 411, LAWS OF 1997, AND SECTIONS 4, 5, 6, AND 7, CHAPTER 398, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.	2484
570	(<i>Senate Bill No. 224; Laslovich</i>) ALLOWING A SCHOOL DISTRICT TO PROVIDE EDUCATIONAL SERVICES AT AN OFFSITE INSTRUCTIONAL SETTING TO CHILDREN ATTENDING SCHOOL IN THE SCHOOL DISTRICT; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ADOPT RULES; REVISING THE DEFINITION OF "AVERAGE NUMBER BELONGING" TO CLARIFY THE INCLUSION OF PUPILS EDUCATED OFFSITE; DEFINING "OFFSITE INSTRUCTIONAL SETTING"; AMENDING SECTION 20-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	2485
571	(<i>Senate Bill No. 260; Perry</i>) PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	2488
572	(<i>Senate Bill No. 287; Schmidt</i>) RELATING TO THE REGULATION OF EPHEDRINE AND PSEUDOEPHEDRINE; PROVIDING THAT PRODUCTS CONTAINING AN INGREDIENT OF EPHEDRINE OR PSEUDOEPHEDRINE MUST BE SOLD IN A LICENSED PHARMACY OR A RETAIL ESTABLISHMENT UNDER RESTRICTED CONDITIONS AND IN LIMITED QUANTITIES; PROVIDING A REBUTTABLE PRESUMPTION AND PENALTIES; PROVIDING FOR A VOLUNTARY RETAILER METHAMPHETAMINE WATCH PROGRAM; REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE GRANTS; PROVIDING IMMUNITY FOR A PERSON REPORTING UNDER THE METHAMPHETAMINE WATCH PROGRAM; AND PROVIDING AN EFFECTIVE DATE	2489

- 573 (*Senate Bill No. 339; Balyeat*) PROVIDING FOR THE ISSUANCE OF A FREE RESIDENT WILDLIFE CONSERVATION LICENSE OR A REDUCED-RATE CLASS AAA RESIDENT COMBINATION SPORTS LICENSE FOR RESIDENT MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY MILITARY PERSONNEL RETURNING FROM AN OUT-OF-STATE CONTINGENCY OPERATION IN THE YEAR OF OR YEAR FOLLOWING THE SERVICE MEMBER'S RETURN AND IN THE FOLLOWING YEAR; ALLOWING RESIDENT MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY MILITARY PERSONNEL WHO HAVE SERVED IN AN OUT-OF-STATE CONTINGENCY OPERATION SINCE SEPTEMBER 11, 2001, AN OPPORTUNITY TO OBTAIN THE FREE OR REDUCED-RATE LICENSE FOR A 2-YEAR PERIOD TO COMMENCE IN 2006 OR 2007; AMENDING SECTIONS 87-2-202, 87-2-711, AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2492
- 574 (*Senate Bill No. 342; Laslovich*) CREATING AN ALTERNATIVE PROJECT DELIVERY CONTRACT PROCESS FOR CERTAIN CONSTRUCTION PROJECTS OF STATE AGENCIES AND CERTAIN LOCAL GOVERNMENTS; ESTABLISHING REQUIREMENTS THAT MUST BE MET IN ORDER TO USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING JUSTIFICATION FOR AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING A STATE AGENCY OR CERTAIN LOCAL GOVERNMENTS THAT USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT TO STATE THE REASONS FOR SELECTING THE CONTRACTOR SELECTED; AND AMENDING SECTIONS 7-5-2301, 7-5-4302, 18-1-102, 18-2-103, 18-4-124, 20-6-606, 20-9-204, AND 67-11-201, MCA 2496
- 575 (*Senate Bill No. 401; Laslovich*) REVISING CHAPTER 1 AND CHAPTER 7 OF THE UNIFORM COMMERCIAL CODE; REVISING CHAPTER 1 TO REFLECT THE SCOPE OF THE CHAPTER, THE APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW, THE CONCEPT OF GOOD FAITH, CHOICE OF LAW, THE RELEVANCE OF COURSE OF PERFORMANCE BETWEEN THE PARTIES, AND THE EXISTENCE OF AN INDEPENDENT STATUTE OF FRAUDS; REVISING CHAPTER 7, CONCERNING DOCUMENTS OF TITLE, TO REFLECT THE DEVELOPMENT OF ELECTRONIC DOCUMENTS OF TITLE; REVISING OTHER PROVISIONS TO REFLECT THE REVISIONS TO CHAPTER 1 AND CHAPTER 7; AMENDING SECTIONS 30-1-101, 30-1-102, 30-1-107, 30-1-201, 30-1-204, 30-1-205, 30-1-208, 30-1-209, 30-2-104, 30-2-310, 30-2-323, 30-2-401, 30-2-503, 30-2-506, 30-2-509, 30-2-605, 30-2-705, 30-2A-103, 30-2A-514, 30-2A-518, 30-2A-519, 30-2A-526, 30-2A-527, 30-2A-528, 30-3-102, 30-4-104, 30-4A-105, 30-4A-106, 30-5-123, 30-7-102, 30-7-103, 30-7-104, 30-7-201, 30-7-202, 30-7-203, 30-7-204, 30-7-205, 30-7-206, 30-7-207, 30-7-208, 30-7-209, 30-7-210, 30-7-301, 30-7-302, 30-7-303, 30-7-304, 30-7-305, 30-7-307, 30-7-308, 30-7-309, 30-7-401, 30-7-402, 30-7-403, 30-7-404, 30-7-501, 30-7-502, 30-7-503, 30-7-504, 30-7-506, 30-7-507, 30-7-508, 30-7-509, 30-7-601, 30-7-602, 30-7-603, 30-8-113, 30-9A-102, 30-9A-203, 30-9A-207, 30-9A-208, 30-9A-301, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-317, 30-9A-338, 30-9A-601, 30-18-103, 30-18-115, 45-6-315, AND 71-3-125, MCA; REPEALING SECTIONS 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, AND 30-7-706, MCA; AND PROVIDING AN APPLICABILITY DATE 2503
- 576 (*Senate Bill No. 443; Roush*) REQUIRING MOTOR VEHICLE INSURANCE PREMIUM REDUCTIONS FOR MONTANA NATIONAL GUARD MEMBERS TRAINED IN DEFENSIVE DRIVING; EXPANDING THE DEFINITION OF "HIGHWAY TRAFFIC SAFETY PROGRAM" TO

MONTANA SESSION LAWS 2005

xcvi

	INCLUDE CERTAIN DEFENSIVE DRIVING TRAINING PROGRAMS; AND AMENDING SECTIONS 33-16-203 AND 61-2-102, MCA	2572
577	(<i>Senate Bill No. 445; McGee</i>) AUTHORIZING THE BOARD OF REGENTS OF THE MONTANA UNIVERSITY SYSTEM TO WAIVE TUITION REGARDLESS OF THE AVAILABILITY OF OTHER WAIVERS FOR A QUALIFIED MEMBER OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA; REPEALING SECTION 10-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE	2573
578	(<i>Senate Bill No. 461; Steinbeisser</i>) REQUIRING THE ATTACHMENT OF A RADIO-TRACKING COLLAR TO AT LEAST ONE WOLF IN A PACK THAT IS ACTIVE NEAR LIVESTOCK OR NEAR A POPULATION CENTER	2575
579	(<i>House Bill No. 9; Witt</i>) ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC TRUST FUND; AND PROVIDING AN EFFECTIVE DATE	2575
580	(<i>House Bill No. 11; McNutt</i>) REVISING THE LAWS GOVERNING THE TREASURE STATE ENDOWMENT PROGRAM; REVISING THE USES OF THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AUTHORIZING EMERGENCY GRANTS AND MATCHING GRANTS FOR PRELIMINARY ENGINEERING STUDIES; ELIMINATING ANNUAL DEBT SERVICE SUBSIDIES ON LOCAL INFRASTRUCTURE PROJECTS, LOANS FROM THE PROCEEDS OF COAL SEVERANCE TAX BONDS AT A SUBSIDIZED INTEREST RATE, AND DEFERRED LOANS FOR PRELIMINARY ENGINEERING STUDY COSTS; REQUIRING REPORTS TO THE GOVERNOR AND THE LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTIONS 90-6-703, 90-6-710, AND 90-6-715, MCA, AND SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE	2579
581	(<i>House Bill No. 28; Wanzenried</i>) ESTABLISHING A LEGISLATIVE BRANCH RESERVE ACCOUNT; PROVIDING FOR THE USE AND FUNDING OF THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-304 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	2589

582	<i>(House Bill No. 45; Olson)</i> REVISING THE LAWS GOVERNING SICK LEAVE; REVISING THE DEFINITION OF SICK LEAVE TO INCLUDE SITUATIONS ALLOWED BY CURRENT CUSTOM AND USAGE; MAKING THE ADOPTION OF RULES PERMISSIVE RATHER THAN MANDATORY; AMENDING SECTIONS 2-18-601 AND 2-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2592
583	<i>(House Bill No. 99; Lange)</i> INCREASING THE PENALTIES FOR DRIVING WHILE THE PERSON'S LICENSE IS SUSPENDED OR REVOKED IF THE REASON FOR THE SUSPENSION OR REVOCATION WAS THAT THE PERSON WAS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT OR THE SUSPENSION WAS FOR REFUSAL TO TAKE A TEST FOR ALCOHOL OR DRUGS REQUESTED BY A PEACE OFFICER WHO BELIEVED THAT THE PERSON MIGHT BE DRIVING UNDER THE INFLUENCE; AND AMENDING SECTIONS 61-5-212 AND 61-8-733, MCA.	2593
584	<i>(House Bill No. 115; McNutt)</i> AMENDING THE LAWS RELATING TO THE EXEMPTION OF PROPERTY FROM PROPERTY TAXATION; ALLOWING THE CHURCH EXEMPTION TO EXTEND TO EDUCATIONAL OR YOUTH RECREATIONAL FACILITIES OPEN TO THE PUBLIC; LIMITING THE ACREAGE OF PROPERTY THAT IS TAX-EXEMPT FOR CHURCHES AND PARSONAGES; DEFINING "CLERGY"; LIMITING THE ACREAGE EXEMPTION FOR EDUCATIONAL PROPERTY AND REQUIRING AN ATTENDANCE POLICY, CURRICULUM, AND INSTRUCTION; PROVIDING THAT UP TO 15 ACRES OF PROPERTY PURCHASED FOR CHARITABLE USE IS EXEMPT AT THE TIME OF PURCHASE; PROVIDING THAT IF EXEMPT PROPERTY IS NOT USED FOR A CHARITABLE PURPOSE WITHIN 8 YEARS OR IS SOLD, THEN LOST TAX REVENUE MUST BE REPAYED; PROVIDING THAT THE REPAYMENT AMOUNT IS A LIEN UPON THE PROPERTY; AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	2595
585	<i>(House Bill No. 172; Cohenour)</i> REVISING CERTAIN RESIDENT AND NONRESIDENT FISHING AND HUNTING LICENSE AND DRAWING FEES; CREATING A RESIDENT SENIOR COMBINATION LICENSE; AMENDING SECTIONS 87-2-113, 87-2-202, 87-2-301, 87-2-306, 87-2-401, 87-2-403, 87-2-411, 87-2-501, 87-2-505, 87-2-508, 87-2-510, 87-2-701, 87-2-704, 87-2-708, 87-2-711, 87-2-801, 87-2-803, AND 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	2608
586	<i>(House Bill No. 177; Olson)</i> GENERALLY REVISING ELECTION LAWS; CLARIFYING HOW RETENTION AND DESTRUCTION SCHEDULES ARE SET FOR ELECTION MATERIALS; CLARIFYING NOTICE PROCEDURES FOR THE CLOSE OF REGISTRATION; CLARIFYING PROVISIONS GOVERNING CANCELLATION OF AN ELECTOR'S REGISTRATION; CHANGING THE TIMEFRAME FOR REQUIRING NEW REGISTRATION AFTER A CHANGE OF RESIDENCE BEFORE AN ELECTION; CLARIFYING THAT A CANDIDATE MAY NOT FILE FOR MORE THAN ONE PUBLIC OFFICE; CLARIFYING HOW WRITE-IN VOTES ARE COUNTED; CLARIFYING WHEN A PRIMARY BALLOT DOES NOT NEED TO BE PREPARED; PROVIDING THAT A DECLARATION OF INTENT NEED NOT BE FILED FOR A WRITE-IN VOTE TO COUNT UNDER CERTAIN CIRCUMSTANCES; REVISING CHALLENGES OF AN ELECTOR'S RIGHT TO VOTE; CLARIFYING PROCEDURES FOR COUNTING VOTES WHENEVER A VOTING SYSTEM ERROR IS SUSPECTED DURING A VOTE COUNT; CLARIFYING COUNT AND RECOUNT PROCEDURES FOR PAPER	

AND NONPAPER BALLOTS; REVISING WHEN FEDERAL ABSENTEE BALLOTS MAY BE RECEIVED AND COUNTED; CLARIFYING THE TIMEFRAME FOR THE REQUISITION OF THE PRINTING AND DISTRIBUTION OF THE VOTER INFORMATION PAMPHLET; AND AMENDING SECTIONS 13-1-303, 13-2-301, 13-2-402, 13-2-514, 13-10-201, 13-10-204, 13-10-209, 13-10-211, 13-10-302, 13-13-212, 13-13-301, 13-14-112, 13-14-113, 13-15-107, 13-15-111, 13-15-206, 13-16-412, 13-16-414, 13-17-211, 13-21-206, AND 13-27-410, MCA

2620

- 587 (*House Bill No. 227; Galvin-Halcro*) REVISING THE DELAYED PAYMENT OF PROPERTY TAXES WITHOUT PENALTY OR INTEREST BY A MEMBER OF THE MILITARY WHO IS ON ACTIVE DUTY OR HOSPITALIZED FOR DUTY-RELATED INJURIES OR ILLNESS, INCLUDING MEMBERS OF THE NATIONAL GUARD AND ARMED FORCES RESERVES; CLARIFYING THE NOTIFICATION REQUIREMENT TO THE COUNTY TREASURER; AND AMENDING SECTIONS 10-1-606, 15-16-102, AND 15-24-202, MCA

2633

- 588 (*House Bill No. 249; Lindeen*) CREATING THE BIG SKY ECONOMIC DEVELOPMENT FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND; ALLOCATING AND TRANSFERRING COAL SEVERANCE TAX FUNDS TO THE BIG SKY ECONOMIC DEVELOPMENT FUND; ESTABLISHING A BIG SKY ECONOMIC DEVELOPMENT PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; PROVIDING FOR THE USE OF THE INTEREST AND INCOME FROM THE BIG SKY ECONOMIC DEVELOPMENT FUND TO PROVIDE FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS FOR QUALIFIED ECONOMIC DEVELOPMENT PROJECTS AND TO PROVIDE FINANCIAL ASSISTANCE TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND CERTAIN OTHER ECONOMIC DEVELOPMENT ORGANIZATIONS; ESTABLISHING THE PURPOSE OF THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; ENUMERATING THE TYPES OF FINANCIAL ASSISTANCE AVAILABLE THROUGH THE BIG SKY ECONOMIC DEVELOPMENT FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-5-703 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE

2636

- 589 (*House Bill No. 482; Lindeen*) INCREASING THE AMOUNT OF COAL SEVERANCE TAX ALLOCATED TO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE ALLOCATED BY THE LEGISLATURE FOR LOCAL IMPACTS, PROVISION OF BASIC LIBRARY SERVICES FOR THE RESIDENTS OF ALL COUNTIES THROUGH LIBRARY FEDERATIONS, AND FOR PAYMENT OF THE COSTS OF PARTICIPATING IN REGIONAL AND NATIONAL NETWORKING, CONSERVATION DISTRICTS, AND THE MONTANA GROWTH THROUGH AGRICULTURE ACT; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE

2642

- 590 (*House Bill No. 493; Noonan*) REVISING THE AEROSPACE TECHNOLOGY BOND PROGRAM; CLARIFYING CONDITIONS UNDER WHICH BONDS MAY BE ISSUED; ALLOWING THE MULTIPLIER EFFECT TO BE USED IN PROJECTING TAX IMPACTS; ELIMINATING EQUIPMENT AS AN ELIGIBLE EXPENSE FOR A PROJECT; AMENDING SECTION 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2646

- 591 (*House Bill No. 517; Wiseman*) PROVIDING FOR THE ISSUANCE OF A MONTANA DISTILLERY LICENSE; PROVIDING THAT A LICENSE MAY BE ISSUED TO A PERSON AUTHORIZED BY FEDERAL LAW TO DISTILL LIQUOR; PROVIDING FOR THE FUNCTIONS THAT MAY BE

TITLE CONTENTS

	PERFORMED BY A MONTANA DISTILLERY; PROVIDING FOR A REDUCED TAX RATE ON LIQUOR SOLD AND DELIVERED IN THE STATE BY A COMPANY THAT MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED, OR PROCESSED AND THAT SOLD NOT MORE THAN 50,000 PROOF GALLONS OF LIQUOR NATIONWIDE; PROVIDING FOR REPORTING, TAX PAYMENTS, AND PENALTIES; AMENDING SECTIONS 16-1-404, 16-4-401, AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE.	2648
592	(<i>House Bill No. 535; Jones</i>) REVISING THE TAXATION OF OIL PRODUCTION FROM STRIPPER WELLS PRODUCING 3 BARRELS A DAY OR LESS; DEFINING "STRIPPER WELL BONUS"; PROVIDING THAT STRIPPER WELL BONUS PRODUCTION IS TAXED AT 6 PERCENT OF GROSS TAXABLE VALUE IF THE PRICE OF OIL AS REPORTED BY THE WALL STREET JOURNAL IS EQUAL TO OR GREATER THAN \$38 A BARREL; AMENDING SECTIONS 15-36-303 AND 15-36-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	2656
593	(<i>House Bill No. 584; Harris</i>) CREATING THE BIG SKY ON THE BIG SCREEN ACT; PROMOTING THE MOTION PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX INCENTIVES FOR FILMING AND FOR DEVELOPING MAGAZINE ADVERTISING IN MONTANA; PROVIDING DEFINITIONS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION OF A PRODUCTION IN ORDER TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR ADMINISTERING THE TAX CREDITS; LIMITING THE TAX CREDITS THAT MAY BE CLAIMED FOR A STATE-CERTIFIED PRODUCTION; PROVIDING FOR THE ADMINISTRATION OF THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE	2662
594	(<i>House Bill No. 592; Waitschies</i>) REVISING AND CLARIFYING THE DETERMINATION OF PENALTY AND INTEREST PROVISIONS APPLIED TO TAXES, FEES, AND OTHER ASSESSMENTS ADMINISTERED BY THE DEPARTMENT OF REVENUE; REVISING UNIFORM PENALTY PROVISIONS; REVISING UNIFORM INTEREST ASSESSMENTS BY USING THE GREATER OF 8 PERCENT OR THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; IMPOSING A HIGHER INTEREST RATE ON CERTAIN TAXPAYERS UNDER CERTAIN CONDITIONS; ESTABLISHING A UNIFORM INTEREST RATE APPLIED TO THE OVERPAYMENT OF TAXES OR FEES; REVISING THE ACCRUAL OF INTEREST ON UNPAID TAXES; APPLYING THE UNIFORM PENALTY AND INTEREST PROVISIONS TO CERTAIN OTHER TAXES AND FEES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-23-214, 15-30-142, 15-30-149, 15-30-209, 15-30-241, 15-30-321, 15-30-323, 15-30-1112, 15-31-111, 15-31-141, 15-31-503, 15-31-510, 15-31-531, 15-31-543, 15-35-112, 15-36-314, 15-37-102, 15-37-105, 15-37-106, 15-37-108, 15-37-114, 15-37-210, 15-38-106, 15-38-110, 15-38-111, 15-50-308, 15-51-109, 15-53-145, 15-53-146, 15-59-112,	

MONTANA SESSION LAWS 2005

c

15-60-206, 15-65-115, 15-66-206, 15-67-206, 15-68-513, AND 15-72-114,
MCA; REPEALING SECTION 15-31-545, MCA; AND PROVIDING
EFFECTIVE DATES AND APPLICABILITY DATES

2668

595 *(House Bill No. 667; Wanzenried)* CREATING A SMALL BUSINESS
HEALTH INSURANCE POOL; PROVIDING FOR EMPLOYER
PREMIUM INCENTIVE PAYMENTS, EMPLOYEE PREMIUM
ASSISTANCE PAYMENTS, AND TAX CREDITS TO BE
ADMINISTERED BY THE COMMISSIONER OF INSURANCE FOR
ELIGIBLE SMALL EMPLOYERS WHO PROVIDE CERTAIN GROUP
HEALTH PLAN COVERAGE FOR THEIR ELIGIBLE EMPLOYEES;
PROVIDING THAT CERTAIN ELIGIBLE SMALL EMPLOYERS MAY
RECEIVE PREMIUM INCENTIVE PAYMENTS AND EMPLOYEES MAY
RECEIVE ASSISTANCE FOR PAYING PREMIUMS FOR HEALTH
INSURANCE PURCHASED THROUGH THE SMALL BUSINESS
HEALTH INSURANCE POOL; ALLOWING THE TAX CREDIT TO BE
CLAIMED WHEN FILING TAX RETURNS; CREATING THE SMALL
BUSINESS HEALTH INSURANCE POOL BOARD OF DIRECTORS AND
ESTABLISHING ITS DUTIES; PROVIDING AUTHORITY TO THE
BOARD TO ESTABLISH ELIGIBILITY REQUIREMENTS FOR
RECEIVING THE PREMIUM INCENTIVE PAYMENTS, PREMIUM
ASSISTANCE PAYMENTS, AND TAX CREDITS; PROVIDING
RULEMAKING AUTHORITY TO THE COMMISSIONER TO
IMPLEMENT THE PREMIUM INCENTIVE PAYMENTS, PREMIUM
ASSISTANCE PAYMENTS, AND TAX CREDITS; PROVIDING
PENALTIES FOR WRONGFULLY OBTAINING PREMIUM INCENTIVE
PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, OR THE TAX
CREDIT; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES TO PURSUE MEDICAID FUNDING FOR
EMPLOYEE PREMIUM ASSISTANCE; AMENDING THE HEALTH AND
MEDICAID INITIATIVES ACCOUNT TO CLARIFY FUNDING FOR
PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE
PAYMENTS, AND TAX CREDITS AND PROVIDING FOR CONTINGENT
FUNDING; AMENDING SECTIONS 15-30-111, 15-30-303, 15-31-511,
33-22-1815, 45-6-301, AND 53-6-1201, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE

2691

596 *(House Bill No. 671; Musgrove)* GENERALLY REVISING THE MOTOR
VEHICLE LAWS; AUTOMATING AND SIMPLIFYING THE PROCESS
FOR ISSUANCE OF TEMPORARY REGISTRATION PERMITS;
STANDARDIZING THE LENGTH OF TEMPORARY REGISTRATION
PERMITS AND THE GRACE PERIOD FOR TITLING OR REGISTERING
A NEWLY ACQUIRED VEHICLE; IMPOSING A \$3 FEE FOR ISSUANCE
OF CERTAIN TEMPORARY REGISTRATION PERMITS; IMPOSING A
\$8 FEE FOR ISSUANCE OF A TEMPORARY REGISTRATION PERMIT
TO A NONRESIDENT OR TO A PERSON VIA THE SECURE
ELECTRONIC APPLICATION; AUTHORIZING CERTAIN PERSONS TO
ELECTRONICALLY UPDATE DEPARTMENT RECORDS VIA
AUTHORIZED AGENT AGREEMENTS; SETTING THE STANDARDS
FOR AUTHORIZED AGENTS, INCLUDING MAXIMUM ALLOWABLE
SERVICE OR CONVENIENCE FEES CHARGEABLE BY AUTHORIZED
AGENTS; AUTHORIZING CERTAIN HEALTH CARE PROVIDERS TO
ISSUE TEMPORARY DISABLED PARKING PLACARDS AND
ELECTRONICALLY SUBMIT DISABLED PARKING PLACARD
APPLICATION ON BEHALF OF A PATIENT; ELIMINATING
CERTIFICATES OF OWNERSHIP FOR CERTAIN MANUFACTURED
HOMES AND FOR MOBILE HOMES AND HOUSETRAILERS;
REVISING AND CLARIFYING BUSINESS PROCESSES FOR
REGISTERING AND RENEWING THE REGISTRATION OF CERTAIN
VEHICLES; REVISING AND CLARIFYING CERTAIN PROVISIONS

	FOR ISSUANCE AND TRANSFER OF LICENSE PLATES; REVISING AND CLARIFYING SPECIAL MOBILE EQUIPMENT AND SINGLE MOVEMENT PERMITS; CLARIFYING TYPES OF VEHICLES DEALERS; REVISING COLLECTION OF DRIVER'S LICENSE FEES AND CERTAIN FUND TRANSFERS; REVISING AND CLARIFYING DRIVER RECORDS AND RECORDKEEPING REQUIREMENTS; CLARIFYING ADMINISTRATIVE HEARING PROCESS FOR CERTAIN DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTIONS 7-14-112, 10-3-1307, 15-1-101, 15-1-116, 15-1-117, 15-1-121, 15-1-122, 15-8-201, 15-8-202, 15-15-201, 15-24-301, 15-24-302, 19-6-709, 23-1-105, 23-2-502, 23-2-511, 23-2-513, 23-2-515, 23-2-616, 23-2-619, 23-2-818, 49-4-301, 49-4-302, 49-4-303, 49-4-304, 49-4-305, 61-1-104, 61-1-111, 61-1-501, 61-1-508, 61-1-513, 61-1-603, 61-3-107, 61-3-109, 61-3-201, 61-3-203, 61-3-212, 61-3-217, 61-3-218, 61-3-220, 61-3-224, 61-3-301, 61-3-302, 61-3-303, 61-3-311, 61-3-312, 61-3-313, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-321, 61-3-322, 61-3-324, 61-3-325, 61-3-331, 61-3-332, 61-3-333, 61-3-334, 61-3-335, 61-3-345, 61-3-347, 61-3-401, 61-3-402, 61-3-403, 61-3-407, 61-3-412, 61-3-415, 61-3-421, 61-3-422, 61-3-425, 61-3-426, 61-3-431, 61-3-433, 61-3-446, 61-3-456, 61-3-458, 61-3-463, 61-3-464, 61-3-474, 61-3-479, 61-3-481, 61-3-501, 61-3-503, 61-3-520, 61-3-522, 61-3-527, 61-3-529, 61-3-535, 61-3-560, 61-3-561, 61-3-562, 61-3-701, 61-3-707, 61-3-721, 61-4-101, 61-4-102, 61-4-111, 61-4-112, 61-4-121, 61-4-222, 61-4-223, 61-4-310, 61-5-103, 61-5-111, 61-5-114, 61-5-115, 61-5-121, 61-5-206, 61-5-208, 61-8-442, 61-10-222, 61-11-102, 61-11-105, 61-11-204, 61-11-210, 76-2-202, AND 76-2-302, MCA; REPEALING SECTIONS 15-16-202, 61-3-207, 61-3-209, 61-3-342, AND 61-3-526, MCA; AND PROVIDING EFFECTIVE DATES	2713
597	(<i>House Bill No. 689; Arntzen</i>) ALLOWING THE RECAPTURE OF PROPERTY TAX INCENTIVES THAT DO NOT MEET THE REQUIREMENTS OF A TAX ABATEMENT FOR NEW AND EXPANDING INDUSTRY, BUILDING REMODELING, RECONSTRUCTION, AND EXPANSION, BUSINESS INCUBATORS, INDUSTRIAL PARKS, ECONOMIC DEVELOPMENT ORGANIZATIONS, AND VALUE-ADDED MANUFACTURING; AND AMENDING SECTIONS 15-24-1402, 15-24-1501, 15-24-1502, 15-24-1802, 15-24-1902, 15-24-2002, AND 15-24-2404, MCA	2842
598	(<i>House Bill No. 700; Mendenhall</i>) GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING THE DISPOSITION AND USE OF METALLIFEROUS MINES LICENSE TAX MONEY; INCREASING THE ALLOCATION OF FUNDS TO THE COUNTY IN WHICH THE MINE IS LOCATED; DECREASING THE ALLOCATION TO THE GENERAL FUND; REVISING THE NAMES OF ACCOUNTS FOR PURPOSES OF CLARIFICATION; CLARIFYING THE USE OF FUNDS ALLOCATED TO THE COUNTY; ELIMINATING THE METAL MINES TAX RESERVE ACCOUNT THAT COULD BE USED FOR ANY PURPOSE PROVIDED BY LAW; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE	2849
599	(<i>House Bill No. 713; Franklin</i>) APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE TO CREATE A TASK FORCE TO CONDUCT A MISSION ASSESSMENT FOR MILITARY AND NATIONAL GUARD INSTALLATIONS IN MONTANA AND TO PROMOTE THE ESTABLISHMENT OF NEW INSTALLATIONS AND EXPANDED MISSIONS; REQUIRING REPORTS AND RECOMMENDATIONS FROM THE TASK FORCE AND THE DEPARTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2852

- 600 (*House Bill No. 728; Lange*) REVISING FUNDING FOR THE STATE VETERANS' CEMETERY PROGRAM; PROVIDING FOR A STATE VETERANS' CEMETERY IN MISSOULA COUNTY AND IN YELLOWSTONE COUNTY AS FUNDING ALLOWS; PROVIDING A STATUTORY APPROPRIATION OF SPECIAL REVENUE; AMENDING SECTIONS 10-2-601, 10-2-603, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE 2852
- 601 (*House Bill No. 740; Heinert*) CREATING THE ASBESTOS DISEASE ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE USED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR GRANTS TO THE LINCOLN COUNTY HEALTH BOARD FOR ASBESTOS-RELATED DISEASE PROGRAMS; APPROPRIATING MONEY FOR THE PROGRAMS; AND PROVIDING AN EFFECTIVE DATE 2854
- 602 (*House Bill No. 757; Jones*) ESTABLISHING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; CREATING A REVOLVING LOAN ACCOUNT; PROVIDING FUNDING FOR THE MONTANA ESSENTIAL FREIGHT RAIL ACT REVOLVING LOAN ACCOUNT; PROVIDING GUIDELINES FOR APPLICATIONS AND ELIGIBILITY FOR A LOAN FROM THE REVOLVING LOAN ACCOUNT; PROVIDING FOR MANAGEMENT OF THE ACCOUNT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE 2855
- 603 (*House Bill No. 758; McNutt*) ESTABLISHING AN OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; REDIRECTING COAL SEVERANCE TAX LOCAL IMPACT FUNDS FROM THE SHARED ACCOUNT; ENACTING A TAX ON OIL AND GAS PRODUCTION THAT TIES TO THE UNUSED PORTION OF THE TAX RATE AUTHORITY OF THE BOARD OF OIL AND GAS CONSERVATION; PROVIDING THAT THE TAX PROCEEDS ARE DEPOSITED INTO THE OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; PROVIDING FOR A DISTRIBUTION BETWEEN COUNTY AND MUNICIPAL GOVERNMENTS OF THE COUNTY; AMENDING SECTIONS 15-35-108, 15-36-304, 15-36-331, AND 15-36-332, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2859
- 604 (*House Bill No. 761; Noonan*) CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MEMBERS OF THE MONTANA NATIONAL GUARD AND RESERVE WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS' ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE; AND PROVIDING A TERMINATION DATE. 2870
- 605 (*House Bill No. 769; Golie*) CREATING THE RAIL SERVICE COMPETITION COUNCIL; ESTABLISHING THE MEMBERSHIP AND

	DUTIES OF THE COUNCIL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE	2873
606	(<i>Senate Bill No. 120; Keenan</i>) REVISING AND EXTENDING THE UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; INCLUDING CRITICAL ACCESS FACILITIES IN THE DEFINITION OF "HOSPITAL"; AMENDING SECTIONS 15-66-101, 15-66-102, AND 15-66-201, MCA, AND SECTION 20, CHAPTER 390, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE	2875
607	(<i>House Bill No. 2; Witt</i>) AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2007; AND PROVIDING AN EFFECTIVE DATE	2877

HOUSE JOINT RESOLUTIONS

<u>HJR</u>		<u>Page</u>
1	(<i>Franklin</i>) URGING THE GOVERNOR, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND THE DEPARTMENT OF CORRECTIONS TO CONTINUE EFFORTS TOWARD INTRAAGENCY AND INTERAGENCY PREVENTION COORDINATION AND TO SUPPORT INTERAGENCY EFFORTS TO ASSIST MONTANANS IN NEED AND TO COMBAT THE SUBSTANTIAL EFFECTS OF SUBSTANCE ABUSE, ESPECIALLY METHAMPHETAMINE USE, ON OUR SOCIETY	2953
3	(<i>Jackson</i>) URGING THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENTER INTO NEGOTIATIONS WITH THE UNITED STATES BUREAU OF RECLAMATION TO DETERMINE THE AVAILABILITY AND COST OF WATER STORED BEHIND HUNGRY HORSE DAM FOR WHICH THE STATE OF MONTANA MIGHT CONTRACT TO SUPPORT FUTURE WATER DEVELOPMENT AND EXISTING WATER USE IN THE CLARK FORK RIVER BASIN	2954
4	(<i>Peterson</i>) URGING MONTANA'S CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION REQUIRING THE U.S. ARMY CORPS OF ENGINEERS TO INCREASE AND MAINTAIN A MINIMUM POOL ELEVATION IN FORT PECK RESERVOIR OF 2226 FEET ABOVE MEAN SEA LEVEL	2955
5	(<i>Small-Eastman</i>) URGING THE U.S. DEPARTMENT OF AGRICULTURE TO REFER TO THE BEEF INDUSTRY IN THIS COUNTRY AS THE UNITED STATES BEEF INDUSTRY AND TO REFRAIN FROM REFERRING TO IT AS THE NORTH AMERICAN BEEF INDUSTRY	2956
6	(<i>Windy Boy</i>) URGING THE U.S. DEPARTMENT OF AGRICULTURE TO LOCATE ITS RURAL DEVELOPMENT SATELLITE OFFICES IN RURAL MONTANA	2957
7	(<i>Small-Eastman</i>) URGING THE UNITED STATES CONGRESS TO REJECT THE UNITED STATES DEPARTMENT OF AGRICULTURE'S PROPOSAL TO RESUME LIVE CATTLE TRADE WITH CANADA UNTIL MONTANA PRODUCERS AND CONSUMERS CAN BE ASSURED THAT THE FOOD SUPPLY IS SAFE FROM BOVINE SPONGIFORM ENCEPHALOPATHY (BSE) AND THAT THE CATTLE INDUSTRY OF MONTANA WILL NOT BE HARMED	2957

- 10 *(Jacobson)* REQUESTING AN INTERIM STUDY TO DEVELOP, CONSOLIDATE, AND UPDATE FIRE-RELATED STATUTES IN ORDER TO IMPROVE WILDLAND FIRE SUPPRESSION AND MITIGATION AND TO ADDRESS DANGEROUS ENVIRONMENTAL CONDITIONS ARISING FROM DROUGHT AND FOREST FUELS, AS WELL AS THE COMPLICATIONS AND COSTS OF FIGHTING FIRES IN WILDLAND/URBAN INTERFACES 2959
- 11 *(Windy Boy)* URGING COOPERATION BETWEEN AND AMONG STATE AND FEDERAL AGRICULTURAL RESEARCH STATIONS AND TRIBAL AGRICULTURAL RESEARCH PROGRAMS TO FACILITATE ONGOING RESEARCH, SHARING OF RESEARCH SCIENTISTS, AND EDUCATIONAL EFFORTS IN ADDRESSING CRITICAL ISSUES CONCERNING DELETERIOUS INSECTS, PESTICIDE USE, LIVESTOCK DISEASE, NOXIOUS WEEDS, AND IRRIGATED AND DRYLAND CROPPING SYSTEMS; AND URGING SUBMISSION OF A REPORT TO THE LEGISLATURE REGARDING THE PROGRESS OF COOPERATIVE RESEARCH EFFORTS AND THE SHARING OF EDUCATIONAL INFORMATION BETWEEN THE STATE AND MONTANA TRIBES AND BETWEEN STATE AND FEDERAL AGRICULTURAL RESEARCH STATIONS 2960
- 12 *(Hamilton)* ENCOURAGING THE CONSTRUCTION OF ROUNDABOUTS INSTEAD OF RIGHT-ANGLE INTERSECTIONS. . . 2962
- 13 *(Clark)* URGING THE UNITED STATES CONGRESS TO REPEAL THE FEDERAL LANDS RECREATION ENHANCEMENT ACT. 2963
- 15 *(Juneau)* REQUESTING AN INTERIM STUDY TO REVIEW ISSUES RELATED TO SENTENCING PRACTICES AND THE DISPROPORTIONATE REPRESENTATION OF MINORITIES IN THE CRIMINAL JUSTICE AND CORRECTIONS SYSTEMS 2964
- 16 *(Groesbeck)* URGING SUPPORT FOR A PILOT-SCALE HYPERSONIC WIND TUNNEL IN BUTTE 2965
- 17 *(McAlpin)* ENCOURAGING THE BOARD OF PUBLIC EDUCATION TO CONSIDER THE BENEFITS OF INCREASING HEALTH ENHANCEMENT IN SCHOOLS AND ENCOURAGING SCHOOLS TO PROVIDE STUDENTS WITH MORE OPPORTUNITIES FOR PHYSICAL ACTIVITY 2966
- 18 *(Himmelberger)* URGING CONGRESS TO ADOPT LEGISLATION THAT WOULD REQUIRE THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT TO NOT ARBITRARILY CLOSE ROADS AND ACCESS TO MONTANA'S PUBLIC LANDS 2967
- 19 *(Matthews)* URGING THE AMERICAN LEGION TO ADOPT A WOOD BAT ONLY RULE FOR AMERICAN LEGION BASEBALL. 2968
- 22 *(Peterson)* URGING THE UNITED STATES SECRETARY OF AGRICULTURE AND THE UNITED STATES SECRETARY OF THE INTERIOR TO DIRECT THE APPROPRIATE FEDERAL AGENCIES TO EXPEDITE THE ELIMINATION OF BRUCELLOSIS IN THE GREATER YELLOWSTONE AREA BISON AND ELK HERDS, AND IN THEIR ENVIRONMENT, AND URGING THE PRESIDENT OF THE UNITED STATES TO NAME THE UNITED STATES DEPARTMENT OF AGRICULTURE AS THE LEAD AGENCY IN AN ELIMINATION PLAN 2969
- 24 *(Bergren)* COMMEMORATING THE BICENTENNIAL OF THE LEWIS AND CLARK EXPEDITION IN MONTANA 2970
- 26 *(Harris)* REQUESTING AN INTERIM STUDY OF THE HISTORY AND TRENDS OF THE STATE'S RELIANCE ON AND USE OF FEDERAL

TITLE CONTENTS

	FUNDS, OF THE HISTORY, TRENDS, AND PORTENTS OF FEDERAL BUDGET DEFICITS, PARTICULARLY AS TO HOW FEDERAL BUDGET DEFICITS HAVE AFFECTED AND MAY IN THE FUTURE AFFECT THE AVAILABILITY OF FEDERAL REVENUE FOR STATE-ADMINISTERED PROGRAMS, AND OF OPTIONS AVAILABLE TO THE LEGISLATURE FOR DEALING WITH REDUCTIONS IN THE AVAILABILITY OF FEDERAL FUNDS FOR PROGRAMS ADMINISTERED BY THE STATE	2971
29	<i>(Rice)</i> CLARIFYING TO APPROPRIATE FEDERAL GOVERNMENT OFFICIALS THAT MONTANA RESERVES ITS APPLICABLE RIGHTS AND REMEDIES TO REQUEST FEDERAL PREDATOR CONTROL AND TO EXERCISE RIGHTS AND REMEDIES TO PREVENT AND CONTROL DAMAGE OR CONFLICT ON FEDERAL, STATE, OR OTHER PUBLIC OR PRIVATE LAND CAUSED BY PREDATORY ANIMALS, AND URGING THE MONTANA CONGRESSIONAL DELEGATION TO TAKE APPROPRIATE MEASURES TO OBTAIN MEANINGFUL FUNDING AND ASSISTANCE FOR MONTANA CITIZENS AND COMMUNITIES THAT HAVE BEEN ADVERSELY AFFECTED BY FEDERAL WOLF REINTRODUCTION	2973
30	<i>(Roberts)</i> REQUESTING AN INTERIM STUDY TO REVIEW THE PROGRAMS AND STATUTES OF VARIOUS STATES IN CREATING HUNTING LICENSE PREFERENCES FOR LANDOWNERS, WITH THE GOAL OF CREATING HUNTING LICENSE PREFERENCES FOR LANDOWNERS WHO PRACTICE SOUND WILDLIFE MANAGEMENT PRINCIPLES	2975
32	<i>(Sesso)</i> REQUESTING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REVIEW ITS RULES GOVERNING SUBMISSION OF PROVIDER CLAIMS, POSTPAYMENT AUDITS, AND RECOUPMENT OF OVERPAYMENTS AND AMEND THOSE RULES, IF NECESSARY, IN ORDER TO GIVE PREDICTABILITY AND FINALITY TO THE MEDICAID PAYMENT PROCESS FOR CERTAIN PROVIDERS	2976
33	<i>(Olson)</i> REQUESTING AN INTERIM STUDY OF ISSUES RELATED TO CONTRACT HARVESTING OF TIMBER FROM SCHOOL TRUST LANDS	2977
34	<i>(Cohenour)</i> REQUESTING AN INTERIM STUDY TO IDENTIFY ALL OF THE SUPERFUND SITES IN MONTANA AND TO STUDY THE IMPACTS OF SUPERFUND SITES ON COMMUNITIES DIRECTLY IMPACTED BY A SUPERFUND SITE	2978
36	<i>(Ripley)</i> REQUESTING AN INTERIM STUDY OF LAWS AND FUNDING RELATED TO THE RESOURCE INDEMNITY TRUST	2980
41	<i>(Campbell)</i> REQUESTING AN INTERIM STUDY TO INVESTIGATE THE SPECIAL CHALLENGES AND OPPORTUNITIES FACING MONTANA INDIAN TRIBES AND THEIR RESPECTIVE TRIBAL LANDS OR RESERVATIONS, WHICH INCLUDE THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION, THE ASSINIBOINE AND GROS VENTRE TRIBES OF THE FORT BELKNAP INDIAN RESERVATION, THE CHIPPEWA AND CREE TRIBES OF THE ROCKY BOY INDIAN RESERVATION, THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, THE CROW TRIBE OF THE CROW INDIAN RESERVATION, THE NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION, AND THE LITTLE SHELL BAND OF THE CHIPPEWA INDIANS, AND THE STATE OF MONTANA WITH RESPECT TO ECONOMIC DEVELOPMENT, TO EXAMINE ALL	

MONTANA SESSION LAWS 2005

cvi

	FACTORS IMPACTING ECONOMIC GROWTH, INCLUDING BUT NOT LIMITED TO TRIBAL HUMAN AND NATURAL RESOURCE DEVELOPMENT, AND TO PROVIDE A BASIS FOR IMPROVING THE ECONOMIC STATE OF INDIAN COUNTRY AND, BY EXTENSION, ALL OF MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 60TH LEGISLATURE IN THE FORM OF COMPREHENSIVE POLICY ANALYSES AND RECOMMENDATIONS	2981
42	(<i>Jent</i>) REQUESTING THAT A LEGISLATIVE STUDY BE CONDUCTED ON HOW PUBLIC EMPLOYEE RETIREMENT FUNDS ARE INVESTED AND HOW INVESTMENT PERFORMANCE, RETIREMENT PLAN BENEFITS, AND LEGISLATIVE POLICY DECISIONS INTERACT TO AFFECT THE ACTUARIAL SOUNDNESS OF THE PUBLIC EMPLOYEE RETIREMENT PLANS AND EMPLOYER'S FUNDING OBLIGATIONS	2982
43	(<i>Peterson</i>) REQUESTING AN INTERIM STUDY OF THE CLASSIFICATION, VALUATION, AND TAXATION OF AGRICULTURAL LAND	2984
44	(<i>Olson</i>) REQUESTING AN INTERIM STUDY OF THE PROPERTY TAXATION OF OIL AND NATURAL GAS PROPERTY	2985
45	(<i>Himmelberger</i>) REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY OPTIONS FOR FUNDING MECHANISMS AND ALLOCATIONS FOR DEPLOYMENT OF A STATEWIDE WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM	2986

HOUSE RESOLUTIONS

<u>HR</u>		<u>Page</u>
1	(<i>Parker</i>) REVISING AND ADOPTING THE HOUSE RULES	2987
2	(<i>Sonju</i>) OPPOSING, AND REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO OPPOSE, FEDERAL LEGISLATION ESTABLISHING STANDARDS FOR BIRTH CERTIFICATES ISSUED BY THE STATES AND EITHER FORCING, OR BY THE THREAT OF WITHHOLDING FUNDS OR OTHER ACTION OR INACTION, PERSUADING THE STATES TO ADOPT THE STANDARDS	3013

SENATE JOINT RESOLUTIONS

<u>SJR</u>		<u>Page</u>
1	(<i>Ellingson</i>) REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES	3014
4	(<i>Cobb</i>) ENCOURAGING MONTANA TRIBAL GOVERNMENTS TO ADOPT SECURED TRANSACTION COMMERCIAL CODES, ENCOURAGING THE DEVELOPMENT OF TRAINING PROGRAMS FOR TRIBAL COURTS ON THE USE OF THE CODES, AND REQUESTING AN APPROPRIATE LEGISLATIVE COMMITTEE TO REPORT ON THE IMPLEMENTATION OF THE CODES AND THE TRAINING	3030

6	<i>(Wheat)</i> REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY ACCESS BY LOW-INCOME MONTANANS TO THE MONTANA CIVIL LEGAL SYSTEM AND TO DETERMINE WHETHER ANY CHANGES ARE APPROPRIATE	3031
7	<i>(Weinberg)</i> RECOGNIZING THE IMPORTANCE OF THE TRANSBOUNDARY REGION OF THE FLATHEAD LAKE AND RIVER DRAINAGE; URGING THAT THE GOVERNOR OF MONTANA NEGOTIATE AN OPERATING AGREEMENT WITH THE GOVERNMENT OF BRITISH COLUMBIA; AND URGING THAT THE INTERNATIONAL JOINT COMMISSION CONDUCT AND COMPLETE AN ENVIRONMENTAL ASSESSMENT PRIOR TO A FINAL DECISION ON COAL BED METHANE AND OTHER HYDROCARBON DEVELOPMENT IN THE VALLEY OF THE FLATHEAD RIVER AND CRITICAL ADJACENT ENVIRONS	3033
9	<i>(Tester)</i> REQUESTING FEDERAL FUNDS FOR REHABILITATION OF THE ST. MARY DIVERSION FACILITIES AND URGING THE SUPPORT AND LEADERSHIP OF THE MONTANA CONGRESSIONAL DELEGATION	3034
11	<i>(Laible)</i> REQUESTING AN INTERIM STUDY TO LOOK AT THE SUBDIVISION REVIEW PROCESS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 60TH LEGISLATURE	3036
12	<i>(Kitzenberg)</i> PROMOTING CIVIC EDUCATION IN MONTANA'S ELEMENTARY AND SECONDARY SCHOOLS	3037
13	<i>(Tester)</i> STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION	3038
14	<i>(Tropila)</i> REQUESTING AN INTERIM STUDY REGARDING THE MISSIONS AND OPERATION OF THE MONTANA NATIONAL GUARD FOR THE PURPOSES OF STATE ACTIVE DUTY PERFORMED TO MEET STATE EMERGENCIES.	3039
17	<i>(Lind)</i> ENCOURAGING RENEWABLE ENERGY DEVELOPMENT; AND URGING THE UNITED STATES CONGRESS TO SUPPORT THE RENEWABLE ENERGY PRODUCTION INCENTIVE PROGRAM AND PRODUCTION TAX CREDIT PROGRAM	3041
19	<i>(Elliott)</i> SUPPORTING THE MONTANA CONSTITUTION, THE UNITED STATES CONSTITUTION, AND THE BILL OF RIGHTS; ENCOURAGING VARIOUS ACTIONS IN SUPPORT OF FIGHTING TERRORISM AND PROTECTING CIVIL RIGHTS AND CIVIL LIBERTIES; REQUESTING THE ATTORNEY GENERAL OF MONTANA TO COMPILE AND DISSEMINATE RELEVANT INFORMATION REGARDING ACTIONS TAKEN BY THE FEDERAL GOVERNMENT UNDER THE USA PATRIOT ACT; AND ENCOURAGING MONTANA'S CONGRESSIONAL DELEGATION TO SUPPORT AND ENSURE THE CIVIL RIGHTS OF ALL MONTANANS AND CITIZENS OF THE UNITED STATES, WHICH INCLUDES ALLOWING THE USA PATRIOT ACT TO EXPIRE.	3042
20	<i>(Curtiss)</i> REQUESTING A PERFORMANCE AUDIT OF THE EXTENT OF CONSERVATION EASEMENTS AND THE PROPERTY TAX POLICY ISSUES ASSOCIATED WITH CONSERVATION EASEMENTS	3046
21	<i>(Roush)</i> URGING SUPPORT FOR AND CONTINUED FUNDING OF AMTRAK PASSENGER RAIL SERVICE THROUGH MONTANA	3047

MONTANA SESSION LAWS 2005

cviii

22	<i>(Pease)</i> URGING CONGRESS TO PASS A WELL-FUNDED, MULTIYEAR FEDERAL HIGHWAY PROGRAM IN A TIMELY MANNER WHILE ALSO PROTECTING MONTANA'S INTERESTS	3048
23	<i>(Elliott)</i> AFFIRMING THE LEGISLATURE'S DESIRE TO BE CONSULTED ON THE PROVISIONS OF INTERNATIONAL TRADE AGREEMENTS; AND REQUESTING MONTANA'S CONGRESSIONAL DELEGATION TO PROMOTE PROTECTIONS FOR MONTANA AND THE BEST INTERESTS OF MONTANA IN THE NEGOTIATION OF THESE AGREEMENTS	3048
24	<i>(Barkus)</i> RECOGNIZING THE CONTRIBUTIONS OF ROTARY INTERNATIONAL AND DESIGNATING FEBRUARY 23, 2005, AS ROTARY DAY IN MONTANA.	3050
26	<i>(Curtiss)</i> URGING SUPPORT FOR CREATING A CENTER FOR THE STUDY AND TREATMENT OF ASBESTOS-RELATED ILLNESS AND FOR PROVIDING RELIEF FOR THE VICTIMS OF ASBESTOS EXPOSURE IN LIBBY, MONTANA	3051
27	<i>(Harrington)</i> URGING THE MONTANA CONGRESSIONAL DELEGATION TO OPPOSE FEDERAL ASBESTOS LEGISLATION THAT WOULD PAY COMPENSATION TO VICTIMS OF ASBESTOS-RELATED DISEASES UNLESS THE LEGISLATION ENSURES THAT THE RESIDENTS OF LIBBY, MONTANA, WHO SUFFER FROM ASBESTOS-RELATED DISEASES ARE INCLUDED WITHIN THE TERMS OF THE LEGISLATION AND RECEIVE THE COMPENSATION THAT THEY NEED AND DESERVE	3052
28	<i>(Squires)</i> ACKNOWLEDGING THE PLANNED FORMATION OF A STATEWIDE TASK FORCE ON PAIN AND SYMPTOM MANAGEMENT; RECOGNIZING THE ROLE THAT WILL BE PLAYED IN THE PRIVATE FUNDING AND ADMINISTRATIVE SUPPORT OF THE TASK FORCE BY THE AMERICAN CANCER SOCIETY; AND ENCOURAGING THE WIDEST POSSIBLE DISSEMINATION OF THE REPORT AND RECOMMENDATIONS OF THE TASK FORCE IN ORDER TO ENSURE ITS ACCEPTANCE AND IMPLEMENTATION BY PRIVATE HEALTH CARE PROFESSIONALS AND PUBLIC POLICYMAKERS	3053
29	<i>(Laslovich)</i> DESIGNATING JUNE 26, 2005, AS MONTANA MINERS' DAY	3056
30	<i>(Weinberg)</i> URGING CONGRESS TO MAINTAIN THE INTEGRITY OF THE MEDICAID PROGRAM AND TO NOT SUPPORT THE PROPOSED PROGRAM REDUCTIONS INCLUDED IN THE EXECUTIVE BUDGET REQUEST TO CONGRESS	3056
31	<i>(Curtiss)</i> URGING THAT PROPOSALS TO TRANSITION THE BONNEVILLE POWER ADMINISTRATION FROM COST-BASED RATES TO MARKET-BASED RATES AND ACCELERATE THE BONNEVILLE POWER ADMINISTRATION'S DEBT REPAYMENT TO THE UNITED STATES TREASURY, AS EXPRESSED IN THE PRESIDENT'S FISCAL YEAR 2006 PROPOSED BUDGET, BE REJECTED.	3058
35	<i>(Cocchiarella)</i> REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY METHODS TO INCREASE THE RESPONSIVENESS, EFFECTIVENESS, AND EFFICIENCIES OF PROFESSIONAL AND OCCUPATIONAL BOARDS AND PROGRAMS DEDICATED TO PUBLIC SERVICE IN MONTANA AND TO PROVIDE RECOMMENDED POLICIES FOR CREATION OF NEW BOARDS, BOARD RULEMAKING, AND BOARD ACCOUNTABILITY	3059

36	<i>(Toole)</i> REQUESTING AN INTERIM STUDY TO INVESTIGATE THE POTENTIAL BENEFITS OF, AND OBSTACLES TO, EXPANDING DISTRIBUTED ENERGY GENERATION IN MONTANA	3061
37	<i>(Williams)</i> REQUESTING A STUDY OF THE CHILD PROTECTIVE SERVICES SYSTEM IN MONTANA	3062
38	<i>(Cocchiarella)</i> REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY ISSUES RELATED TO IDENTITY THEFT, INCLUDING JURISDICTIONAL ISSUES REGARDING FEDERAL AND STATE AUTHORITY, THE PROSECUTION OF INTERNET CRIMES, THE ROLE OF CREDIT REPORTS AND CREDIT REPORTING AGENCIES, THE ROLE OF EDUCATION FOR BUSINESSES AND CONSUMERS, VICTIM RESTITUTION, SALES OF PERSONAL INFORMATION BY THIRD PARTIES AND DIRECT MARKETING FIRMS, AND OTHER IDENTITY THEFT ISSUES RAISED DURING THE STUDY	3063
39	<i>(Toole)</i> REQUESTING AN INTERIM STUDY TO EVALUATE THE POSSIBLE CREATION OF AN ONGOING ENERGY PLANNING AND COORDINATING ENTITY IN MONTANA.	3064
40	<i>(Schmidt)</i> REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE DELIVERY OF PROSECUTION SERVICES AND COUNTY CIVIL LEGAL SERVICES BY COUNTY ATTORNEYS IN MONTANA	3066
41	<i>(Weinberg)</i> REQUESTING A STUDY OF THE DEVELOPMENT OF COMMUNITY MENTAL HEALTH CRISIS RESPONSE SYSTEMS . . .	3067
42	<i>(Ryan)</i> CONVEYING THE 59TH LEGISLATURE'S HIGHEST HONOR AND DEEPEST RESPECT FOR THE SERVICE AND SACRIFICE OF MONTANA'S ARMY AND AIR NATIONAL GUARD MEMBERS WHO HAVE BEEN CALLED TO FEDERAL ACTIVE DUTY IN THE WAR ON TERROR	3069

SENATE RESOLUTIONS

<u>SR</u>		<u>Page</u>
1	<i>(Ellingson)</i> REVISING AND ADOPTING THE SENATE RULES.	3070
3	<i>(Kitzenberg)</i> URGING THE MONTANA DEPARTMENT OF TRANSPORTATION TO MAKE SPECIFIED IMPROVEMENTS ON THE ROAD FROM SCOBEE TO WOLF POINT	3089
4	<i>(Squires)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3089
5	<i>(Squires)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3092
6	<i>(Squires)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR	

MONTANA SESSION LAWS 2005

cx

	AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3095
7	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3096
8	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3098
9	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3100
10	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3101
11	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.	3101
13	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 20, 2005, TO THE SENATE.	3102
14	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 20, 2005, TO THE SENATE.	3103
15	(<i>Cooney</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2005, TO THE SENATE	3104
16	(<i>Cooney</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2005, TO THE SENATE	3104
17	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 31, 2005, TO THE SENATE	3107
18	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 31, 2005, TO THE SENATE	3108
19	(<i>Squires</i>) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 8, 2005, TO THE SENATE.	3109

SESSION LAWS
Enacted by the
FIFTY-NINTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2005, through April 21, 2005

**Explanatory Note: Section 5-11-205, MCA, provides that
new parts of existing statutes be printed in italics and
that deleted provisions be shown as stricken.**

**COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION**

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for fiscal years 2005, 2006, and 2007 for the operation of the 59th legislature and the costs of preparing for the 60th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	\$2,383,047
2. House of Representatives (26)	3,963,836
3. Legislative Services Division (22)	552,839

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 31, 2005

CHAPTER NO. 2

[HB 38]

AN ACT LIMITING THE EXEMPTION OF LAND BY A PURELY PUBLIC CHARITY TO 160 ACRES FOR EXEMPTIONS APPLIED FOR AFTER DECEMBER 31, 2004; REQUIRING THAT AN APPLICATION FOR EXEMPTION CONTAIN A LEGAL DESCRIPTION OF THE PROPERTY; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

- (a) except as provided in 15-24-1203, the property of:
 - (i) the United States, except:
 - (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or
 - (B) as provided in 15-24-1103;
 - (ii) the state, counties, cities, towns, and school districts;
 - (iii) irrigation districts organized under the laws of Montana and not operating for profit;
 - (iv) municipal corporations;
 - (v) public libraries; and
 - (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for

residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

- (i) 13% for tax year 2003;
- (ii) 13.3% for tax year 2004;
- (iii) 13.8% for tax year 2005;
- (iv) 14.2% for tax year 2006;
- (v) 14.6% for tax year 2007;
- (vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

- (i) the acquired cost of the personal property is less than \$15,000;
- (ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
- (iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in 61-1-139; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

- (i) all agricultural implements and equipment;
- (ii) all mining machinery, fixtures, equipment, tools, and supplies;
- (iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;
- (iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;
- (v) all goods and equipment that are intended for rent or lease;
- (vi) special mobile equipment as defined in 61-1-104;
- (vii) furniture, fixtures, and equipment;
- (viii) x-ray and medical and dental equipment;
- (ix) citizens' band radios and mobile telephones;
- (x) radio and television broadcasting and transmitting equipment;
- (xi) cable television systems;
- (xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e):

(i) the term “institutions of purely public charity” includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) *not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.*

(b) For the purposes of subsection (1)(g), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) “industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) “industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (a) \$20,000 in the case of a single-family residential dwelling;
- (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004.

Approved February 23, 2005

CHAPTER NO. 3

[HB 84]

AN ACT CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH OF INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT PROPERTY TAX RATE IS TO BE REDUCED; AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

“15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

- (a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);
- (b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;
- (e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;
- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 SA07N (state annual) for the target year wage and salary data series. *If the fall state annual SA07N series is not available, the department shall use the most recent wage and salary data available. If the bureau of economic analysis changes the name of the SA07N series, the department shall use the series that replaces the SA07N series.*

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to calculations of inflation-adjusted Montana wage and salary income growth made by the department of revenue before [the effective date of this act].

Approved February 23, 2005

CHAPTER NO. 4

[HB 193]

AN ACT PROVIDING FOR THE RECAPTURE OF A QUALIFIED ENDOWMENT TAX CREDIT IN THE TAX YEAR OF RECOVERY WHEN A CHARITABLE GIFT THAT GAVE RISE TO THE CREDIT IS RECOVERED BY THE TAXPAYER; INCLUDING AS INCOME IN THE YEAR THAT A CHARITABLE GIFT IS RECOVERED BY THE TAXPAYER THE AMOUNT DEDUCTED THAT IS ATTRIBUTABLE TO THE CHARITABLE GIFT; AMENDING SECTIONS 15-1-230, 15-30-166, 15-31-161, AND 15-31-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-230, MCA, is amended to read:

“15-1-230. (Temporary) Report on income tax credit to committee.

The department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the credit under 15-30-166, the total amount of the credit claimed, *the total amount of the credit recaptured*, and the department’s cost associated with administering the credit. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)”

Section 2. Section 15-30-166, MCA, is amended to read:

“15-30-166. (Temporary) Credit for contributions to qualified endowment—recapture of credit—deduction included as income. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the taxpayer’s income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(4) *If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:*

(a) *include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's individual income tax or corporation license tax; and*

(b) *increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

Section 3. Section 15-31-161, MCA, is amended to read:

“15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment — recapture of credit — deduction included as income. (1) A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) *If during any tax year a charitable gift is recovered by the corporation, the corporation shall:*

(a) *include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's corporation license tax or corporation income tax; and*

(b) *increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

Section 4. Section 15-31-162, MCA, is amended to read:

“15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment — recapture of credit — deduction included as income. (1) A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members ~~or managers~~ of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member ~~or manager~~ of a limited liability company may claim in a year is \$10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) (a) *If during any tax year a charitable gift is recovered by the small business corporation, partnership, or limited liability company, the entity shall*

include as income the amount deducted in any prior year that is attributable to the charitable gift.

(b) In the tax year that a charitable gift is recovered, each shareholder, partner, or member shall increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)”

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Section 7. Termination. [This act] terminates December 31, 2007.

Approved February 23, 2005

CHAPTER NO. 5

[HB 194]

AN ACT CLARIFYING THE REPORTING REQUIREMENTS FOR THE QUARTERLY PAYMENT OF OIL AND NATURAL GAS PRODUCTION TAXES; CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES ALLOCATED TO EACH COUNTY; AMENDING SECTIONS 15-36-311 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-311, MCA, is amended to read:

“15-36-311. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

(2) The operator shall complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold ~~from pre-1985 wells and post-1985 wells~~ by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.”

Section 2. Section 15-36-331, MCA, is amended to read:

“15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year ~~2003~~ 2004 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) ~~plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002,~~ is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	~~45.03%~~	45.04%	45.04%	45.05%
Blaine	~~57.56%~~	57.84%	58.11%	58.39%
Carbon	~~50.24%~~	49.59%	48.93%	48.27%
Chouteau	~~56.67%~~	57.16%	57.65%	58.14%
Custer	~~103.63%~~	92.27%	80.9%	69.53%
Daniels	~~48.31%~~	49.15%	49.98%	50.81%
Dawson	~~56.32%~~	53.48%	50.64%	47.79%
Fallon	~~39.89%~~	40.52%	41.15%	41.78%
Fergus	~~112.2%~~	97.86%	83.52%	69.18%
Garfield	~~54.51%~~	51.66%	48.81%	45.96%
Glacier	~~76.56%~~	70.65%	64.74%	58.83%
Golden Valley	~~55.5%~~	56.45%	57.41%	58.37%
Hill	~~66.97%~~	66.15%	65.33%	64.51%
Liberty	~~63.32%~~	61.53%	59.73%	57.94%
McCone	~~58.75%~~	55.81%	52.86%	49.92%
Musselshell	~~57.06%~~	54.25%	51.44%	48.64%
Petroleum	~~67.8%~~	61.21%	54.62%	48.04%
Phillips	~~53.3%~~	53.54%	53.78%	54.02%
Pondera	~~104.14%~~	87.51%	70.89%	54.26%
Powder River	~~64.7%~~	63.44%	62.17%	60.9%
Prairie	~~38.43%~~	39.08%	39.73%	40.38%
Richland	~~45.23%~~	45.97%	46.72%	47.47%
Roosevelt	~~46.75%~~	46.4%	46.06%	45.71%

Rosebud	~~37.41%~~	38.05%	38.69%	39.33%
Sheridan	~~46.64%~~	47.09%	47.54%	47.99%
Stillwater	~~56.05%~~	55.2%	54.35%	53.51%
Sweet Grass	~~58.23%~~	59.24%	60.24%	61.24%
Teton	~~53.01%~~	50.71%	48.4%	46.1%
Toole	~~56.2%~~	56.67%	57.14%	57.61%
Valley	~~59.82%~~	57.02%	54.22%	51.43%
Wibaux	~~47.71%~~	48.19%	48.68%	49.16%
Yellowstone	~~50.69%~~	49.37%	48.06%	46.74%
All other counties	~~50.15%~~	50.15%	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) ~~for the fiscal year ending June 30, 2003, to be distributed as follows:~~

~~(i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~

~~(ii) all remaining proceeds to the state general fund;~~

~~(b) for the fiscal year beginning July 1, 2003 2004, through the fiscal year ending June 30, 2011, to be distributed as follows:~~

~~(i) 1.23% to the coal bed methane protection account established in 76-15-904;~~

~~(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;~~

~~(iii) 2.95% to the orphan share account established in 75-10-743;~~

~~(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~

~~(v) all remaining proceeds to the state general fund;~~

~~(e)(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:~~

~~(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;~~

~~(ii) 2.95% to the orphan share account established in 75-10-743;~~

~~(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~

~~(iv) all remaining proceeds to the state general fund."~~

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to oil and natural gas production occurring in tax years beginning after December 31, 2004.

Approved February 23, 2005

CHAPTER NO. 6

[HB 447]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAM; REPEALING STATUTORY TEACHERS' AND BLUE-COLLAR PAY SCHEDULES; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-304, 2-18-312, AND 2-18-703, MCA; REPEALING SECTIONS 2-18-313 AND 2-18-315, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 ~~and excluding employees compensated under 2-18-313 and 2-18-315~~, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, ~~2-18-313, and 2-18-315~~ supersede any other plan or systems established through collective bargaining after the adjournment of the ~~58th~~ 59th legislature.

(4) Pay levels provided for in 2-18-312, ~~2-18-313, and 2-18-315~~ may not be increased through collective bargaining after adjournment of the ~~58th~~ 59th legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, ~~2-18-313, and 2-18-315~~ for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~58th~~ 59th legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system.”

Section 2. Section 2-18-303, MCA, is amended to read:

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(6) through (9)~~ (5) through (8).

(c) On the first day of the first complete pay period in fiscal year ~~2004~~ 2006, each employee is entitled to the amount of the employee’s base salary as it was on June 30, ~~2003~~ 2005.

(d) Effective on the first day of the first complete pay period that includes ~~January 1, 2005 an employee’s anniversary date during the fiscal year ending June 30, 2006,~~ the base salary of each employee must be increased by ~~an amount equal to 25 cents an hour or by a lesser amount so that the employee’s base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f) 3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater.~~ Effective on the first day of the first complete pay period that includes an employee’s anniversary date during the fiscal year ending June 30, 2007, the base salary of each employee must be increased by 4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater. For employees hired on or before September 30, 2005, the anniversary date is October 1.

(e) An employee’s base salary may be no less than the entry salary for the employee’s assigned grade.

~~(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.~~

(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those ~~teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315 employees who are members of collective bargaining units that have collectively bargained separate classification and pay plans or employees covered under subsections (5) and (6) of this section.~~

~~(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:~~

~~(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.~~

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the~~

amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.

~~(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue collar occupations recognized in the state blue collar classification plan who are members of units that have collectively bargained separate classification and pay plans.~~

~~(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(4)(3) (a) (i)~~ If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.

~~(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.~~

~~(iii)(ii)~~ If ratification of a completely integrated collective bargaining agreement, as required by subsection ~~(4)(a)(i)~~ (3)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, ~~2-18-313, 2-18-315,~~ and this section may be provided for in collective bargaining agreements.

~~(5)(4)~~ The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, ~~2-18-313, and 2-18-315.~~

(6)(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

~~(7)(6)~~ (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

~~(8)(7)~~ The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

~~(9)(8)~~ The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that

substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.”

Section 3. Section 2-18-304, MCA, is amended to read:

“2-18-304. Longevity allowance. (1) (a) In addition to the compensation provided for in 2-18-303, ~~or 2-18-312, 2-18-313, or 2-18-315,~~ each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee’s base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) ~~Beginning October 1, 1999, in~~ *In* addition to the longevity allowance provided under subsection (1)(a), each employee who has completed 15 years of uninterrupted state service or completed 20 years of uninterrupted state service must receive an additional 0.5% of the employee’s base salary for each of those additional 5 years of uninterrupted service.

(c) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee’s date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee’s date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service.”

Section 4. Section 2-18-312, MCA, is amended to read:

“2-18-312. Statewide pay schedule. (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~2004~~ *2006* is as follows:

Annual Hours — 2080

Pay Matrix — State

Pay Range: Entry Salary to Market Salary

Note: Does Not Include Insurance

Matrix Type — Annual

GRADE	ENTRY SALARY	MARKET SALARY	MAXIMUM SALARY
1	9,703	11,415	13,128
2	10,452	12,324	14,196
3	11,257	13,308	15,358
4	12,131	14,375	16,619

5	13,110	15,569	18,028
6	14,237	16,950	19,664
7	15,456	18,442	21,428
8	16,837	20,136	23,436
9	18,320	21,967	25,614
10	19,968	23,999	28,031
11	21,773	26,231	30,688
12	23,779	28,716	33,654
13	25,966	31,436	36,907
14	28,397	34,459	40,521
15	31,085	37,816	44,521
16	34,089	41,577	49,066
17	37,459	45,795	54,131
18	40,990	50,232	59,474
19	44,946	55,215	65,485
20	49,363	60,819	72,275
21	54,264	66,993	79,723
22	59,741	73,936	88,132
23	65,919	81,788	97,658
24	72,860	90,622	108,384
25	80,538	100,419	120,300

(2) *The statewide classification pay schedule beginning the first pay period that includes October 1, 2005, is as follows:*

GRADE	ENTRY SALARY	MARKET SALARY	MAXIMUM SALARY
1	10,042	12,088	14,133
2	10,818	13,010	15,201
3	11,651	14,007	16,363
4	12,555	15,090	17,624
5	13,569	16,301	19,033
6	14,735	17,702	20,669
7	15,997	19,215	22,433
8	17,426	20,934	24,411
9	18,961	22,790	26,619
10	20,666	24,851	29,036
11	22,535	27,149	31,762
12	24,611	29,722	34,832
13	26,874	32,537	38,199
14	29,391	35,665	41,939
15	32,173	39,140	46,107

16	35,282	43,033	50,783
17	38,770	47,398	56,026
18	42,425	51,990	61,556
19	46,519	57,148	67,777
20	51,091	62,948	74,805
21	56,163	69,338	82,513
22	61,832	76,524	91,216
23	68,226	84,651	101,076
24	75,410	93,793	112,177
25	83,357	103,934	124,511

(3) *The statewide classification pay schedule beginning the first pay period that includes October 1, 2006, is as follows:*

GRADE	ENTRY SALARY	MARKET SALARY	MAXIMUM SALARY
1	10,444	12,883	15,321
2	11,251	13,820	16,389
3	12,117	14,834	17,551
4	13,057	15,935	18,812
5	14,112	17,166	20,221
6	15,325	18,591	21,857
7	16,637	20,129	23,621
8	18,123	21,876	25,629
9	19,720	23,763	27,807
10	21,493	25,859	30,224
11	23,437	28,235	33,033
12	25,596	30,910	36,225
13	27,949	33,838	39,727
14	30,566	37,092	43,617
15	33,460	40,705	47,951
16	36,693	44,754	52,814
17	40,321	49,294	58,267
18	44,122	54,070	64,018
19	48,380	59,434	70,488
20	53,134	65,466	77,797
21	58,410	72,112	85,813
22	64,305	79,585	94,865
23	70,955	88,037	105,119
24	78,426	97,545	116,664
25	86,692	108,091	129,491"

Section 5. Section 2-18-703, MCA, is amended to read:

“2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701; ~~and for members of the legislature, and for employees of the Montana university system,~~ the employer contribution for group benefits is ~~\$410~~ \$460 a month for the period from July 2003 2005 through June 2004 December 2005, \$506 a month for the period from January 2006 through December 2006, and \$460 \$557 a month for the period from July 2004 through June 2005 January 2007 and for each succeeding month. ~~For employees of the Montana university system, the employer contribution for group benefits is \$506 a month for the period from July 2005 through June 2006 and \$557 a month for July 2006 and for each succeeding month.~~ If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.”

Section 6. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies, from the designated state fund, to implement the adjustments provided for in 2-18-303:

Fiscal Year 2006			
General Fund	State Special	Federal Special	Proprietary
Legislative Branch			
\$209,282	\$18,179	\$0	\$0

Consumer Council

0	11,734	0	0
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Judicial Branch

599,262	23,565	2,033	0
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Executive Branch

5,613,599	5,553,930	3,644,273	138,263
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University System

3,820,187	0	125,024	0
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Total	\$10,242,330	\$5,607,408	\$3,771,330	\$138,263
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Fiscal Year 2007

General Fund	State Special	Federal Special	Proprietary
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Legislative Branch

\$538,330	\$46,934	\$0	\$0
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Consumer Council

0	30,024	0	0
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Judicial Branch

1,547,500	59,996	5,282	0
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Executive Branch

14,700,424	14,466,134	9,491,019	361,653
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University System

9,007,001	0	293,720	0
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Total	\$25,793,255	\$14,603,088	\$9,790,021	\$361,653
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(2) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

Fiscal Year 2006

General Fund	State Special	Federal Special	Proprietary
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Personal Services Contingency

\$1,500,000	\$2,400,000	\$500,000	\$100,000
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(3) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

Fiscal Year 2006

General Fund	Other Funds
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Labor-Management

Training Initiative	\$ 75,000
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Section 7. Repealer. Sections 2-18-313 and 2-18-315, MCA, are repealed.

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved February 24, 2005

CHAPTER NO. 7

[SB 60]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT BY RULE THE NUMBER OF BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE, NOT TO EXCEED THE NUMBER OF BEDS ALLOWED BY FEDERAL LAW; DELETING THE LIMITATION ON THE NUMBER OF ACUTE CARE INPATIENT BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE; AMENDING SECTION 50-5-233, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-233, MCA, is amended to read:

“50-5-233. Designation of critical access hospitals — adoption of rules. (1) The department may designate as a critical access hospital a facility that:

(a) is:

(i) located more than 35 road miles or, in the case of a facility located in mountainous terrain or where only secondary roads exist, more than 15 road miles from a hospital or another critical access hospital; or

(ii) a necessary provider of health care services to residents of the area where the facility is located;

(b) provides 24-hour emergency care that is necessary for ensuring access to emergency care services in the area served by the facility;

(c) ~~has no more than 15 acute care inpatient beds or, in the case of a facility with swing beds, 25 acute care inpatient beds, of which no more than 15 are used for acute care at any one time, for providing inpatient care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient complies with the bed limitations adopted by rule, not to exceed the number specified in 42 U.S.C. 1395i-4(c)(2)(B), (c)(2)(E), and (f);~~

(d) *provides inpatient acute care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient;*

~~(d)~~(e) complies with the staffing requirements of 42 U.S.C. 1395i-4(c)(2)(B)(iv); and

~~(e)~~(f) operates a quality assessment and performance improvement program and follows appropriate procedures for review of utilization of services as specified in 42 U.S.C. 1395x(aa)(2)(I).

(2) The department shall adopt rules to implement this section, including the following:

(a) standards for determining whether the facility qualifies as a necessary provider pursuant to subsection (1)(a)(ii);

(b) standards for determining whether the 24-hour emergency care provided is necessary to ensure that the area served by the facility has adequate access to emergency care services; ~~and~~

(c) procedures for applying for and receiving designation as a critical access hospital; *and*

(d) *designation of the maximum number of beds allowed pursuant to subsection (1)(c) and consistent with federal law.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 23, 2005

CHAPTER NO. 8

[SB 240]

AN ACT REAUTHORIZING CERTAIN STATE AGENCY LOANS FROM THE INTERCAP PROGRAM; PROVIDING THAT THESE LOANS PREVIOUSLY AUTHORIZED BY THE LEGISLATURE CONSTITUTE STATE DEBT; RATIFYING THE TERMS OF AND SECURITY FOR THESE LOANS AS CURRENTLY EMBODIED IN THE LOAN AGREEMENTS WITH THE MONTANA BOARD OF INVESTMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has previously authorized various state agencies to borrow from the INTERCAP program authorized under the Municipal Finance Consolidation Act of 1983; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature has specified loan security for some of these loans and not for others; and

WHEREAS, the funding for these loans is obtained from proceeds of bonds purchased by private investors and the status of these loans should be clarified.

Be it enacted by the Legislature of the State of Montana:

Section 1. Loan reauthorization. (1) All loans listed in subsection (2) are reauthorized. The amount shown for each loan represents the actual amount authorized by the legislature or, in the absence of a specified amount authorized by the legislature, the amount committed by the Montana board of investments in its loan agreements. The terms of and security for these loans, either as authorized by the legislature or embodied in loan agreements with the Montana board of investments, are ratified.

(2) The following loans are reauthorized in the original principal amount of:

(a) \$500,000 to the department of justice for the law enforcement academy to be paid from the state general fund as provided in Chapter 531, Laws of 1995;

(b) \$3,712,000 to the petroleum tank release compensation board to clean up leaking underground storage tanks to be paid from petroleum storage tank cleanup fees as provided in Chapter 115, Laws of 1997;

(c) \$600,000 to the department of natural resources and conservation for information technology to be paid from the state general fund instead of school trust land income as provided in Chapter 578, Laws of 1999;

(d) \$2,000,000 to the department of administration, public employees' retirement board, for the state defined contribution retirement system plan startup costs to be paid from employer and employee contributions as provided in Chapter 471, Laws of 1999;

(e) \$340,000 to the department of administration for the voluntary employees' beneficiary association startup costs to be paid from the state general fund as provided in Chapter 272, Laws of 2001;

(f) \$4,500,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 394, Laws of 2001; and

(g) \$18,000,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 562, Laws of 2003.

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of a state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Remedial nature. [This act] is intended to be remedial in nature and should not be construed to affect or impair the validity of any of the loans listed in [section 1] before [the effective date of this act].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved February 23, 2005

CHAPTER NO. 9

[HB 21]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

“17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 27, 2003~~ [the effective date of this act].”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 2005

CHAPTER NO. 10

[HB 27]

AN ACT ALLOWING THE MONTANA HISTORICAL SOCIETY TO CONDUCT A BIENNIAL REVIEW RATHER THAN A QUARTERLY AUDIT OF THE FUNDS OF A NONPROFIT CORPORATION THAT MANAGES A STATE-OWNED HISTORIC SITE OR BUILDING; ALLOWING THE SOCIETY TO AUDIT THE FUNDS WHEN DETERMINED NECESSARY; AMENDING SECTION 22-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-603, MCA, is amended to read:

“22-3-603. Management of historic sites and buildings — contracts.

(1) The Montana historical society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on behalf of the contracting local nonprofit corporation. The nonprofit corporation ~~must~~ *shall* conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) A contract may not be entered into or any other obligation incurred for the purposes in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection (2) to deposit in a local financial institution all profits, revenue, royalties, or fees received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and ~~audited quarterly~~ *reviewed biennially* by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property. *The Montana historical society or its designee may conduct an audit of the funds when determined necessary by the society.*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 2005

CHAPTER NO. 11

[HB 29]

AN ACT REVISING THE DEFINITION OF SHORT-TERM WORKER FOR LEGISLATIVE BRANCH PURPOSES; AND AMENDING SECTIONS 2-18-601 AND 2-18-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-601, MCA, is amended to read:

“2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) “Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means:

(a) *for the executive and judicial branches*, a short-term worker as defined in 2-18-101; or

(b) *for the legislative branch*, an individual who:

(i) *is hired by a legislative agency for an hourly wage established by the agency;*

(ii) *may not work for the agency for more than 6 months in a continuous 12-month period;*

(iii) *is not eligible for permanent status;*

(iv) *may not be hired into another position by the agency without a competitive selection process; and*

(v) *is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.*

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 2. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each

pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker, as defined in ~~2-18-101~~ 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

Approved March 15, 2005

CHAPTER NO. 12

[HB 37]

AN ACT REQUIRING THAT INTEREST EARNED ON MONEY IN THE STATE LIVESTOCK PER CAPITA FEE ACCOUNT AND IN COUNTY PREDATORY ANIMAL CONTROL FUNDS BE DEPOSITED IN THE RESPECTIVE ACCOUNT OR FUNDS; AMENDING SECTIONS 15-24-925, 81-7-303, AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-925, MCA, is amended to read:

"15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock. *Interest earned on money in the account must be deposited in the account.*"

Section 2. Section 81-7-303, MCA, is amended to read:

"81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 1 year of age or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license

fee in an amount to be determined by the board. All owners or persons in possession of a sheep 1 year of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only. *Interest earned on money in the fund must be deposited in the fund.*

Section 3. Section 81-7-603, MCA, is amended to read:

“81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months ~~old~~ *of age* or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months ~~old~~ *of age* or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program. *Interest earned on money in the fund must be deposited in the fund.*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 15, 2005

CHAPTER NO. 13

[HB 66]

AN ACT CHANGING FROM MANDATORY TO DISCRETIONARY THE CREDIT, FOR EACH DAY OF INCARCERATION PRIOR TO CONVICTION,

GRANTED AGAINST THE FINE WHEN A FINE IS LEVIED IN ADDITION TO A TERM OF IMPRISONMENT ON CONVICTION OF AN OFFENSE; AND AMENDING SECTION 46-18-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-403, MCA, is amended to read:

“46-18-403. Credit for incarceration prior to conviction. (1) ~~Any A~~ person incarcerated on a bailable offense ~~and~~ against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.

(2) ~~Any A~~ person incarcerated on a bailable offense ~~who does not supply bail and who does not supply bail and~~ against whom a fine is levied on conviction of the offense ~~must~~ may be allowed a credit for each day of incarceration prior to conviction, ~~except that the~~, *except that the* amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration must be established annually by the board of county commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility for which the rate is established.”

Approved March 15, 2005

CHAPTER NO. 14

[HB 108]

AN ACT REVISING THE DESIGNATION OF THE WAGE COLLECTION FUND; AMENDING SECTION 39-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-213, MCA, is amended to read:

“39-3-213. Disposition of wages. (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the ~~private purpose trust wage collection~~ fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the ~~private purpose trust wage collection~~ fund do not bear interest. *The wage collection fund is an agency fund as provided in 17-2-102(3)(d).* The payment of wages collected may be made by means of state warrants.

(2) ~~Warrants~~ A warrant issued pursuant to subsection (1) that ~~remain~~ remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 2005

CHAPTER NO. 15

[HB 118]

AN ACT REVISING BANKING LAWS; ELIMINATING THE PROHIBITION ON OUT-OF-STATE BANKS AND BANK HOLDING COMPANIES FROM

ACQUIRING IN-STATE BANKS OR BRANCH BANKS BY CONSOLIDATION OR MERGER; AUTHORIZING CERTAIN ACTIVITIES AND ESTABLISHING REQUIREMENTS FOR A BANK RESULTING FROM CONSOLIDATION OR MERGER WITH RESPECT TO BRANCH BANKING; AUTHORIZING IN-STATE BANKS TO ESTABLISH OUT-OF-STATE BRANCH BANKS; REPEALING THE AUTHORIZATION OF OUT-OF-STATE BANKS TO DO BUSINESS IN MONTANA USING THEIR EXISTING CORPORATE NAME PROVIDED THEY DO NOT ENGAGE IN BANKING BUT ONLY LOAN MONEY; AMENDING SECTIONS 32-1-371, 32-1-372, AND 32-1-1001, MCA; AND REPEALING SECTION 32-1-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-371, MCA, is amended to read:

“32-1-371. Consolidation or merger of banks. (1) (a) Any two or more banks doing business in this state may, with the approval of the department in the case of a resulting state bank, consolidate or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1.

~~(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation or merger any bank or branch bank in this state.~~

(e)(b) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, consolidate or merge with a savings association located in this state and may, upon the consolidation or merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the ~~consolidated or merged~~ *resulting* bank. The ~~consolidated or merged~~ *resulting* bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

(3) Upon consolidation or merger, the ~~consolidated or merged~~ *resulting* bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(4) (a) *Upon consolidation or merger, the resulting bank may:*

(i) maintain the branch banks and other offices previously maintained by the consolidating or merging banks; and

(ii) *establish, acquire, or operate additional branch banks at any location where any bank involved in the consolidation or merger could have established, acquired, or operated a branch bank under applicable federal or state law if that bank had not been a party to the consolidation or merger.*

(b) *A resulting bank that intends to establish, acquire, or operate a branch bank pursuant to subsection (4)(a) that is organized under the laws of this state must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside this state.*

(c) *A resulting bank organized under federal law or the laws of another state shall provide the department with copies of all applications or notices filed with any federal or other state regulatory agency seeking to establish, acquire, or operate a branch bank pursuant to subsection (4)(a) within this state. The copies must be filed with the department within 5 days of their filing with the federal or other state agency.*

(4)(5) Upon consolidation or merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.”

Section 2. Section 32-1-372, MCA, is amended to read:

“32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section, ~~at any place within the state.~~ The formation and operation of a branch bank, *wherever located*, by a bank organized under the laws of this state require the prior approval of the department. *A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.*

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in ~~the Montana Electronic Funds Transfer Act 32-6-103~~, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(6) ~~This~~ *A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. However, this section may not be interpreted to authorize de novo interstate bank branching and may not be interpreted to authorize a bank not located in this state to establish, acquire, or operate, or maintain a branch bank in this state.”*

Section 3. Section 32-1-1001, MCA, is amended to read:

“32-1-1001. Definition of foreign trust company. (1) For the purposes of this part, the term “foreign trust company” includes each banking and trust association or corporation organized under the laws of any state other than

Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

(2) A foreign trust company acting pursuant to this part is not a foreign corporation regulated by ~~32-1-103 or~~ 32-1-402.”

Section 4. Repealer. Section 32-1-103, MCA, is repealed.

Approved March 15, 2005

CHAPTER NO. 16

[SB 14]

AN ACT ELIMINATING THE CAPITOL RESTORATION COMMISSION; AND REPEALING SECTIONS 5-17-201, 5-17-202, 5-17-203, 5-17-204, 5-17-205, 5-17-206, AND 5-17-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 5-17-201, 5-17-202, 5-17-203, 5-17-204, 5-17-205, 5-17-206, and 5-17-207, MCA, are repealed.

Approved March 15, 2005

CHAPTER NO. 17

[SB 20]

AN ACT REMOVING THE REQUIREMENT THAT A MUNICIPALITY DIVERT ITS WATER FROM AN A-CLOSED WATER BODY IN ORDER TO QUALIFY FOR THE CONSIDERATION FOR NONABANDONMENT OF A MUNICIPAL WATER RIGHT; INCLUDING A MUNICIPAL WATER SUPPLY THAT IS GOING TO BE USED AS APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AS A CRITERION FOR DETERMINING NONABANDONMENT; AND AMENDING SECTION 85-2-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-227, MCA, is amended to read:

“85-2-227. Claim to constitute prima facie evidence — relevant evidence — abandonment — criteria for presumption of municipal nonabandonment. (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use ~~from a water classified by the board of environmental review before January 1, 1999, as A-Closed under administrative rule is a unique water suited to municipal water use and that such a claim~~ by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to:

(i) an emergency *municipal water supply*; ~~or~~

(ii) a supplemental municipal water supply; or

(iii) *any other use approved by the department under Title 85, chapter 2, part 4.*"

Approved March 15, 2005

CHAPTER NO. 18

[HB 77]

AN ACT INCREASING THE APPLICATION AND RENEWAL FEES FOR SEPTIC CLEANING AND DISPOSAL LICENSES; REVISING THE ALLOCATION OF LICENSE FEE REVENUE; AMENDING SECTIONS 75-10-1203 AND 75-10-1212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-1203, MCA, is amended to read:

"75-10-1203. Special revenue account. There is an account in the state special revenue fund. Money in the account must be used to fund administration and enforcement of this part. *The department shall use \$50 of each license fee collected under 75-10-1212 to provide training and education for those licensed under this part.*"

Section 2. Section 75-10-1212, MCA, is amended to read:

"75-10-1212. License term, renewal, and fees. (1) A license expires on December 31 of each calendar year. A license is renewable in accordance with

procedures established in rules adopted pursuant to 75-10-1202 and upon receipt of the application provided for in subsection (2) of this section. A license is not transferable. If a person ceases to do business, the license terminates and the license must be returned to the department.

(2) An application for renewal of a license must be made on a form provided by the department. The application must contain:

- (a) the full name and address of the licensee;
- (b) a list of counties in which business is to be conducted during the renewal term;
- (c) a list of disposal sites that the licensee intends to use during the renewal term;
- (d) for each disposal site listed pursuant to subsection (2)(c) but not previously listed by the licensee for the year immediately preceding the renewal year:
 - (i) a certification by the local health officer or the local health officer's representative in the county in which the disposal site is located that the site meets all applicable state and local requirements; and
 - (ii) written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and
- (e) any additional information required by the department by rule.

(3) The fee for a license, including renewal of a license, is ~~\$125~~ \$300, payable to the department at the time of application for the license or renewal. A federal agency, city, town, county, or other political subdivision is not required to pay the license fee. A city, town, county, or other political subdivision, including a federal agency if allowed by federal law, shall comply with all other requirements of this part. The department shall annually return 40% ~~\$50 of the fees each license fee~~ to the county where the ~~fees were~~ fee was collected. The state portion of the fee must be deposited in the account provided for in 75-10-1203. The county portion of the fee must be used to defer the cost of the county to enforce this part.

(4) In addition to the license fee required under subsection (3), the department shall collect a late fee from any person that has failed to submit a license fee between January 31 and April 1 of a renewal year and that operates a business governed by this part in the renewal year. The late fee is \$125 and must be deposited in the account provided for in 75-10-1203. The late fee is the exclusive remedy for the late payment of a renewal fee."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved March 17, 2005

CHAPTER NO. 19

[HB 43]

AN ACT REQUIRING OIL AND GAS PRODUCERS TO ITEMIZE CHARGES ASSESSED TO THE OWNER OF A NATURAL GAS ROYALTY; AMENDING

SECTION 82-10-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-10-104, MCA, is amended to read:

“82-10-104. Payment of royalties — form of record required. (1) An oil and gas producer paying royalties by check, draft, or order shall include with every ~~such~~ payment a form showing the following matters relating to that payment:

- (a) the name of the royalty owner to whom the payment is made;
- (b) the date of the check, draft, or order;
- (c) any royalty owner identification number used by the producer for ~~such~~ *the* royalty owner;
- (d) the ~~month and year~~ *time period* during which production occurred for which payment is being made;
- (e) any number used to identify the lease under which production occurred;
- (f) the type of product produced;
- (g) barrels of oil ~~and/or~~ *and* cubic feet of gas for which payment is made;
- (h) the amount and type of all taxes withheld;
- (i) the net value of production; ~~and~~
- (j) the royalty owner’s net value; *and*
- (k) *contact information for obtaining additional information regarding the payment and answers to questions.*

(2) In addition to the information required in subsection (1), an oil and gas producer paying royalties to a royalty owner shall, at the time of payment, specify by line item every charge assessed against the royalty owner.

~~(2)~~(3) Any person purposely and knowingly violating the provisions of subsection (1) *or* (2) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.”

Section 2. Effective date. [This act] is effective July 1, 2006.

Approved March 18, 2005

CHAPTER NO. 20

[HB 78]

AN ACT ELIMINATING THE REQUIREMENT THAT PRIOR TO ISSUING OR RENEWING A PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL MAKE A DETERMINATION OF FULL COMPLIANCE OR ISSUE A COMPLIANCE ORDER; AMENDING SECTION 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-509, MCA, is amended to read:

“75-11-509. Inspections — permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

- (a) the owner or operator of the tank;
- (b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

(4) The department shall by rule provide:

- (a) requirements for the scope and timing of inspections; and
- (b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.

(5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(6) The owner or operator shall retain the original inspection report and mail a copy to the department.

(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. ~~Except as provided in subsection (9), prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, that the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection.~~

~~(9) The department may issue and renew permits for tanks that are not in full compliance with the operation and maintenance requirements of this part and rules adopted pursuant to this part only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, that the noncompliance be corrected at the earliest practicable time. The department may also take other enforcement actions, including actions for penalties under this chapter, and may pursue any other remedy available to the department to address noncompliance with this part or with rules, permits, or orders issued~~

~~pursuant to this part. Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.~~

(10)(9) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it ~~shall~~ *must* have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 21

[HB 80]

AN ACT REVISING LAWS RELATING TO ENFORCEMENT OF CHILD SUPPORT TO ALLOW REFERRALS TO AND FROM OTHER IV-D PROGRAMS, INCLUDING TRIBAL PROGRAMS; AMENDING SECTIONS 40-5-201, 40-5-202, 40-5-203, 40-5-206, 40-5-226, 40-5-263, 40-5-271, 40-5-403, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-601, 40-5-701, 40-5-901, 40-5-906, 40-5-909, AND 40-5-923, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-201, MCA, is amended to read:

“40-5-201. Definitions. As used in this part, the following definitions apply:

(1) “Alleged father” means a person who is alleged to have engaged in sexual intercourse with a child’s mother during a possible time of conception of the child or a person who is presumed to be a child’s father under the provisions of 40-6-105.

(2) (a) “Child” means:

(i) a person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age and still in high school;

(iii) a person who is mentally or physically incapacitated if the incapacity began prior to the person’s 18th birthday; or

(iv) in a IV-D case, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for ~~interstate~~ *IV-D* services from an agency of another state *or an Indian tribe* under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state *or an Indian tribe* having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order;

(b) a support order for spousal maintenance of the custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any

procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child;

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; and

(c) when the context requires, includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the custodial parent of a child receiving services under this chapter; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

Section 2. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of public health and human services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives ~~an interstate~~ a referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an ~~interstate~~ action by a Title IV-D agency of ~~another state~~.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public

assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) When the department is providing services, a recipient or former recipient of public assistance who assigned support rights under 42 U.S.C. 602(a)(26) or 42 U.S.C. 608(a)(3) or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 42 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 42 U.S.C. 602(a)(26) and applies to the lesser of:

- (a) the amount of public assistance paid; or
- (b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

- (a) administer oaths;
- (b) certify official acts and records;
- (c) issue investigative and hearing subpoenas;
- (d) order discovery before and after a hearing;
- (e) hold prehearing and settlement conferences;
- (f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence;
- (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including a hearing on a claim that property is exempt from execution and the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action; and
- (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, the notice, service, or response must be made to the department's child support enforcement division.

(15) The department may collect any funds received under this chapter, and wrongfully retained, by the obligor through any remedy available for collection of child support.

(16) A hearing on a claim that property is exempt from execution must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that a party's case is substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing."

Section 3. Section 40-5-203, MCA, is amended to read:

"40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department shall continue to provide services after public assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under this section, without requiring an application, application fee, or other request for services. Acceptance of continued services constitutes agreement to the terms and conditions set for applicants by the department under this section.

(4) Services under this section, including information requests, are available to ~~obligors, obligees, and residents of other states~~ *nonresidents* on the same terms as residents of this state.

(5) The department may terminate services under this section if it:

(a) receives a written request for termination of services from the person to whom services are being provided;

(b) receives notice that the child is receiving public assistance; or

(c) determines that the person receiving services has violated any term or condition set by the department for an applicant under this section.

(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."

Section 4. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering ~~interstate~~ *IV-D* inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

(a) name;

(b) residential and mailing addresses;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) state and local tax and revenue records;

(i) penal corrections records;

(j) address, location, and description of any real property or titled personal property; and

(k) any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest.

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

(4) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) ~~county government~~ attorneys and courts having jurisdiction in support and abandonment proceedings and IV-D agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

(a) the department received notice that a protective order with respect to the party has been entered against the other party; or

(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

Section 5. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the

request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline

amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or ~~another IV-D agency of another state~~ under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 6. Section 40-5-263, MCA, is amended to read:

“40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all ~~interstate~~ IV-D cases referred to the department ~~by other states~~. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding ~~interstate~~ IV-D enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, Uniform Reciprocal Enforcement of Support Act, ~~or the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act~~; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any ~~interstate~~ IV-D referral made by ~~interstate~~ application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act, ~~or the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act~~. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating ~~state agency in another state, an Indian tribe, or a country~~ that a case filed in the registry of foreign support orders, including a petition under the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may:

(a) proceed under Title 40, chapter 5, part 1; or

(b) pursue any other remedy available to it to establish or enforce a support order.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any ~~interstate~~ IV-D referral;

(b) request missing information from the initiating ~~state agency in another state, an Indian tribe, or a country~~;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating ~~state agency in another state, an Indian tribe, or a country~~, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department ~~to a resident of this state~~ and the obligor ~~resides or the obligor's income or assets reside~~ outside the state.

(6) If the department is providing support enforcement services ~~to a resident of this state~~, the director or the director's designee may certify any ~~interstate~~ petition, application, and referral, including a petition under part 1 of this chapter.

(7) A lien created by operation of law or issued by order of a court or ~~another IV-D agency in another state~~ entity to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."

Section 7. Section 40-5-271, MCA, is amended to read:

“40-5-271. Registration of support orders. (1) The department may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state or by a court or administrative agency of another state, *an Indian tribe, or a country*. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.

(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

- (a) did not have jurisdiction to enter the order;
- (b) did not have personal jurisdiction over the party; or
- (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, *an Indian tribe, or a country*, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

- (i) of the amount of any alleged arrearage as of the date of the notice;
- (ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);
- (iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and
- (iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;

(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;

(iii) the order was obtained by fraud;

(iv) the issuing court or agency has stayed enforcement of the order pending appeal;

(v) the order has been vacated, suspended, or modified by a later order;

(vi) there is a defense under the law of this state to the remedy sought; or

(vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing ~~state~~ *jurisdiction*, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

Section 8. Section 40-5-403, MCA, is amended to read:

"40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Employer" includes a payor.

(4) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(5) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state *or an Indian tribe* to which a person has assigned the right to receive current and accrued support payments.

(6) "Obligor" means a person who owes a duty to make payments under a support order.

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

(8) "Support order" has the meaning provided in 40-5-201.

(9) *"IV-D agency" or "Title IV-D agency" means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."*

Section 9. Section 40-5-431, MCA, is amended to read:

"40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not the obligor resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by ~~a public~~ *another IV-D agency of another state* as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the ~~foreign~~ withholding order *issued by an entity other than the department*, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section.

(2) The application for registration of ~~a foreign~~ *an order issued by an entity other than the department* for income withholding must include:

- (a) a certified copy of the support order, with all modifications of the order;
- (b) a certified copy of the income withholding order;
- (c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the ~~foreign~~ *other* jurisdiction for issuance of the income withholding order have been carried out in full;
- (d) the name, address, and social security number of the obligor;
- (e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the ~~foreign~~ *other* jurisdiction extends to other income; and
- (f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the ~~foreign~~ income withholding order *issued by an entity other than the department* is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. Registration of ~~a foreign~~ *an income-withholding order issued by an entity other than the department* under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation."

Section 10. Section 40-5-432, MCA, is amended to read:

"40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support

order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for ~~interstate~~ income withholding must include:

(a) a certified copy of the support order, with all ~~modification thereof~~ *modifications of the support order*;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if ~~such~~ *the* records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall ~~commence~~ *begin* procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the ~~interstate~~ *interjurisdictional* aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within ~~such~~ *the* time *limit* and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit."

Section 11. Section 40-5-433, MCA, is amended to read:

"40-5-433. Additional duties of department in interstate income withholding. (1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency ~~which~~ *that* requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the ~~interstate~~ application."

Section 12. Section 40-5-434, MCA, is amended to read:

“40-5-434. Initiation of income withholding in other jurisdictions.

Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income ~~in another~~ *outside of the* state, the department shall request the *Title IV-D* agency responsible for income withholding in that ~~state~~ *jurisdiction* to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other ~~state~~ *jurisdiction* all documentation required by the law of that ~~state~~ *jurisdiction* necessary for the purpose of obtaining an income withholding order in that ~~state~~ *jurisdiction*. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.”

Section 13. Section 40-5-601, MCA, is amended to read:

“40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, “support” means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

- (a) that issued the support order;
- (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

- (a) there is a support order issued by a court or administrative agency of this or another state, *an Indian tribe, or a country* with jurisdiction to enter the order;
- (b) the obligated person had actual or constructive knowledge of the order; and
- (c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

- (a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a \$500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.”

Section 14. Section 40-5-701, MCA, is amended to read:

“40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) “Child” means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate *IV-D* services from an agency of another state under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) “Delinquency” means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months’ support payments as of the date of service of a notice of intent to suspend a license.

(3) “Department” means the department of public health and human services.

(4) “IV-D case” means a case in which the department is providing support enforcement services as a result of:

~~(a) an assignment of support rights under 53-2-613;~~

~~(b) a payment of public assistance;~~

~~(c) an application for support enforcement services under 40-5-203; or~~

~~(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the~~

~~Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act.~~

~~(5)~~(4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

~~(6)~~(5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

~~(7)~~(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state *or an Indian tribe* that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

~~(8)~~(7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

~~(9)~~(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

~~(10)~~(9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

~~(11)~~(10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

~~(12)~~(11) "Subpoena" means a writ or order issued by a ~~district~~ court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

~~(13)~~(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

(a) support to a child under the laws of this or any other state or under a support order;

(b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(14)~~(13) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

~~(15)~~(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(iv) an administrative agency of another state or an Indian tribe with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(16)~~(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

~~(17)~~(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by ~~the district~~ a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 15. Section 40-5-901, MCA, is amended to read:

"40-5-901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom

the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance or other support to be paid to a child's custodial parent.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state or an *Indian tribe* under Title IV-D. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 16. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with ~~child support enforcement agencies of this and other states~~ *other IV-D agencies* for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of

support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 17. Section 40-5-909, MCA, is amended to read:

“40-5-909. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the

department for processing and distribution to the person or agency entitled to receive the payment whenever:

- (a) the case is receiving IV-D services; or
- (b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

(8) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case registry and payment processing unit.

(9) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case registry and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (9)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(10) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(11) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

(12) *If the department is providing IV-D services for the enforcement of a tribal court order that expressly permits satisfaction of a child support obligation with noncash resources, this section applies to the portion of the support obligation paid or payable with cash resources."*

Section 18. Section 40-5-923, MCA, is amended to read:

"40-5-923. Information and records — disclosure. Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employee W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) courts, tribunals, and administrative agencies in this and any agency of another state or an Indian tribe having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;

(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;

(3) the obligor or obligee who is the subject of the information;

(4) the state vital statistics agency for the purposes of 50-15-302; and

(5) the department of revenue. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 19. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 20. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 22

[HB 87]

AN ACT TRANSFERRING RESPONSIBILITY FOR FLEET VEHICLE REGISTRATION FROM THE DEPARTMENT OF TRANSPORTATION TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 61-3-324 AND 61-3-325, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-324, MCA, is amended to read:

“61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of ~~transportation~~ to register the fleet annually through the department of ~~transportation~~ in lieu of registering each motor vehicle in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of ~~transportation~~ prior to November 1 of each year;

(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of ~~transportation~~.

(3) A motor vehicle may be added to the fleet.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to the department of ~~transportation~~ the current registration receipt and the license plate for the vehicle no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why ~~he the owner~~ is not able to surrender the receipt or license plate.”

Section 2. Section 61-3-325, MCA, is amended to read:

“61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition. (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as

part of the fleet on the following fleet renewal date. The department ~~of transportation~~ shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department ~~of transportation~~ shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department ~~of transportation~~ shall also collect a registration fee of \$7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain \$4.50 of each registration fee for administrative costs and forward the remaining \$3 to the state treasurer for deposit in the general fund.

(c) All fees and taxes must be paid no later than February 15 each year.”

Section 3. Effective date. [This act] is effective January 1, 2006.

Approved March 18, 2005

CHAPTER NO. 23

[HB 90]

AN ACT EXTENDING THE TERMINATION DATE FOR THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AND AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4, Chapter 81, Laws of 2003, is amended to read:

“**Section 4. Termination.** [This act] terminates December 31, ~~2006~~ 2008.”

Approved March 18, 2005

CHAPTER NO. 24

[HB 101]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE A TERM PERMIT FOR A LOAD THAT IS IN EXCESS OF SPECIFIED LIMITS BUT THAT DOES NOT EXCEED 35,000 POUNDS IN EXCESS AXLE WEIGHT; AND AMENDING SECTION 61-10-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-125, MCA, is amended to read:

“**61-10-125. Other fees.** (1) There is charged for a single trip permit for a load that is over the gross allowable load provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1):

- (a) \$10 for distances to and including 100 miles;
- (b) \$30 for distances from 101 to 199 miles; and
- (c) \$50 for distances over 200 miles traveled.

(2) (a) There is charged a fee of:

(i) \$200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight;

(ii) \$500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iii) \$750 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iv) \$1,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight and no tandem axle exceeding 15,000 pounds in excess axle weight;

(v) \$1,500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 25,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vi) \$2,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 30,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vii) \$3,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 35,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

~~(vii)~~(viii) \$4,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 40,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation.

(b) The fees provided in subsection (2)(a) are annual fees but may be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually. However, if the fee is paid other than annually, there is an additional fee of \$10 each time a fee is paid.

(c) A permit issued under this subsection (2) is valid for a period of no less than 1 calendar quarter and no more than 1 calendar year.

(d) The department of transportation or its agent may not issue a term permit for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the term permit has obtained approval from the department of transportation, through a weight analysis, for the configuration of the vehicle.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

Total Excess Axle Weight (pounds)	Calculated Cost of 25 Miles of Travel (dollars)
5,000	3.50
10,000	7.00
15,000	10.50

20,000	14.00
25,000	17.50
30,000	21.00
35,000	24.50
40,000	28.00
45,000	31.50
50,000	35.00
55,000	38.50
60,000	42.00
65,000	45.50
70,000	49.00
75,000	52.50
80,000	56.00
85,000	59.50
90,000	63.00
95,000	66.50
100,000	70.00
over 100,000	70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued."

Approved March 18, 2005

CHAPTER NO. 25

[HB 107]

AN ACT UPDATING THE AUTHORITY OF AND REQUIREMENTS FOR THE DEPARTMENT OF ADMINISTRATION TO PLACE CERTAIN BUSTS, PLAQUES, STATUES, MEMORIALS, MONUMENTS, ART DISPLAYS, AND OTHER ITEMS IN THE CAPITOL, ON THE CAPITOL GROUNDS, OR IN STATE BUILDINGS ON THE CAPITOL COMPLEX; ELIMINATING THE PEARL HARBOR MEMORIAL COMMITTEE AND CERTAIN ADMINISTRATIVE PROVISIONS RELATING TO THE PEARL HARBOR MEMORIAL COMMITTEE AS A RESULT OF THE COMPLETION OF THE MEMORIAL TO PEARL HARBOR SURVIVORS; AMENDING SECTIONS 2-17-804, 2-17-807, 2-17-808, AND 2-17-813, MCA; AND REPEALING SECTIONS 5-17-301, 5-17-302, AND 5-17-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-804, MCA, is amended to read:

“2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, *plaques*, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor’s mansion;

(d) advise the department of administration on interior decoration of the capitol; and

(e) advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, *plaque*, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.”

Section 2. Section 2-17-807, MCA, is amended to read:

“2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, *plaque*, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part.

(2) (a) ~~Except as provided in subsection (2)(b),~~ a state building, space, or room in the capitol complex may not be named after an individual or a bust, *plaque*, statue, memorial, monument, or art display commemorating an

individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) *The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H.W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.*

(3) A bust, *plaque*, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, *plaques*, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, *plaque*, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

Section 3. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, *plaques*, statues, memorials, monuments, and art displays. (1) The following busts, *plaques*, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the *plaques* commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, ~~and~~ the 1972 Montana constitutional convention, *and the women legislators' centennial*;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

~~(d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;~~

~~(e)(d)~~ the statues of:

(i) Wilbur Fiske Sanders;

(ii) ~~Jeanette~~ Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

~~(f)(e)~~ the Montana statehood centennial bell;

~~(g)(f)~~ the gallery of outstanding Montanans;

~~(h)(g)~~ the Montana constitutional exhibit; and

~~(i)(h)~~ the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, *plaques*, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the ~~statue~~ statues of Thomas Francis Meagher *and Lady Liberty*;

(b) the ~~plaque~~ *plaques* commemorating:

(i) Donald Nutter;

(ii) *President George H.W. Bush; and*

(iii) *American prisoners of war and personnel of the United States armed services missing in action; and*

(c) *two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;*

(d) *the Montana centennial square; and*

(e) *the monument of the ten commandments.*

(3) ~~The statue by Robert Sriver entitled "symbol of the pros"~~ *is following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:-*

(a) *the statue by Robert Sriver entitled "symbol of the pros";*

(b) *the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, and Pearl Harbor survivors and the peace pole;*

(c) *the sculptures of the herd bull and the eagle;*

(d) *the plaques commemorating the Montana national guard and Lewis and Clark; and*

(e) *the arrastra.*

(4) *The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:*

(a) *the paintings of Dr. W.F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";*

(b) *the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";*

(c) *the plaque commemorating Walt Sullivan and the plaque of the Sam W. Mitchell building; and*

(d) *the busts of Lee Metcalf and Sam W. Mitchell.*

~~(4)~~(5) *The senate sculpture provided for in 2-17-809 is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.*

~~(5)~~(6) *The council shall determine the specific placement of the items identified in subsections (1) through (3) (4)."*

Section 4. Section 2-17-813, MCA, is amended to read:

"2-17-813. Certain items entrusted to Montana historical society. A bust, *plaque*, statue, memorial, monument, or art display in possession of the state that may have been associated with the capitol complex but is not listed under 2-17-808 is entrusted to the Montana historical society for storage or temporary display until a suitable location is identified, recommended for placement by the council, and approved by the legislature for long-term placement."

Section 5. Repealer. Sections 5-17-301, 5-17-302, and 5-17-303, MCA, are repealed.

Approved March 18, 2005

CHAPTER NO. 26

[HB 126]

AN ACT SIMPLIFYING AND CLARIFYING THE WORKERS' COMPENSATION ACT; CHANGING THE TERM "AVERAGE WEEKLY WAGE" TO "STATE'S AVERAGE WEEKLY WAGE"; AMENDING SECTIONS 17-6-317, 17-6-318, 39-11-103, 39-11-202, 39-71-116, 39-71-118, 39-71-401, 39-71-2211, AND 39-71-2312, MCA; REPEALING SECTIONS 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, AND 39-71-813, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the *state's* average weekly ~~salary~~ *wage*, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the *state's* average weekly ~~salary~~ *wage*, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off,

except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section.”

Section 2. Section 17-6-318, MCA, is amended to read:

“17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the *state’s* average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the *state’s* average weekly wage to a maximum of two times the *state’s* average weekly wage; or

(b) is less than the *state’s* average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the *state’s* average *weekly* wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application to the board through its financial institution or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board.”

Section 3. Section 39-11-103, MCA, is amended to read:

“39-11-103. (Temporary) Definitions. As used in this chapter, the following definitions apply:

~~(1) “Average weekly wage” has the meaning provided in 39-71-116.~~

~~(2)~~(1) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(3)~~(2) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(4)~~(3) “Employee” means the individual employed in a new job.

~~(5)~~(4) "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(6)~~(5) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(7)~~(6) (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(8)~~(7) "New jobs credit" means the credit provided in 39-11-203.

~~(9)~~(8) "Office of economic development" means the office of economic development established in 2-15-218.

~~(10)~~(9) "Primary sector business" means an employer engaged in expanding operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the employer occur outside of Montana or the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

~~(11)~~(10) "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)~~(11) (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of purchase of equipment to be owned or utilized by the eligible training provider.

~~(13)~~(12) "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers.

(13) “*State’s average weekly wage*” has the meaning provided in 39-71-116. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 4. Section 39-11-202, MCA, is amended to read:

“39-11-202. (Temporary) Primary sector business workforce training grants — eligibility. (1) The grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant’s sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job ~~that has~~ *for which* an average weekly wage *is paid* that meets or exceeds the lesser of ~~Montana’s~~ *the* current *state’s* average weekly wage, the current average weekly wage of the county in which the employees are to be principally employed, or for jobs that will be principally located on a reservation, the current average weekly wage of the reservation.

(b) The office of economic development may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section may not exceed an amount greater than the present value of expected incremental tax receipts, as described in 39-11-203, that are expected over the 10-year period immediately following the grant award. The committee shall consider the loan rate established by the board of investments pursuant to the Municipal Finance Consolidation Act of

1983 that is in effect at the time of the grant and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the maximum grant amount.

(5) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy. Funding ceilings will be determined by the availability of funding, the cost for each job, and the quality of the primary sector business proposal.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the full amount of the grant will be reimbursed in the event that the primary sector business ceases operation within 12 months from the time that the grant is awarded;

(ii) requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues to the state, as calculated in 39-11-203, that are the result of the company failing to meet the number of jobs or pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be accessed against and paid by the company in the next fiscal year.

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)"

Section 5. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.~~

~~(5)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(5)(a)~~ (4)(a) through ~~(5)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until

the age of 18 years and only when a beneficiary, as defined in subsections ~~(5)(a)~~ ~~(4)(a)~~ through ~~(5)(e)~~ ~~(4)(e)~~, does not exist.

~~(6)(5)~~ “Business partner” means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

~~(7)(6)~~ “Casual employment” means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(8)(7)~~ “Child” includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(9)(8)~~ (a) “Construction industry” means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(10)(9)~~ “Days” means calendar days, unless otherwise specified.

~~(11)(10)~~ “Department” means the department of labor and industry.

~~(12)(11)~~ “Fiscal year” means the period of time between July 1 and the succeeding June 30.

~~(13)(12)~~ (a) “Household or domestic employment” means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer’s family, including but not limited to housecleaning and yard work, ~~but~~.

(b) *The term* does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(14)(13)~~ “Insurer” means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(15)(14)~~ “Invalid” means one who is physically or mentally incapacitated.

~~(16)(15)~~ “Limited liability company” ~~is as defined~~ *has the meaning provided* in 35-8-102.

~~(17)(16)~~ “Maintenance care” means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(18)(17)~~ “Medical stability”, “maximum healing”, or “maximum medical healing” means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(19)(18)~~ “Objective medical findings” means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)(19)~~ “Order” means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at ~~or decision~~ ~~made by~~ the department.

~~(21)(20)~~ “Palliative care” means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(21) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(23)~~(22) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

- (a) has a permanent impairment established by objective medical findings;
- (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and
- (c) has an actual wage loss as a result of the injury.

~~(24)~~(23) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.~~

~~(26)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(25) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

~~(28)~~(26) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(29)~~(27) "Reasonably safe tools ~~and~~ or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(30)~~(28) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(30)~~ (28), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(31)~~(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(30)~~ "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

~~(32)~~(31) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(33)~~(32) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(34)~~(33) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(35)~~(34) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(36)~~(35) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (35)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(36)(a)~~ (35)(a) through ~~(36)(e)~~ (35)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician,

as provided for in subsection ~~(36)(a)~~ (35)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(36) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(38)~~(37) "Year", unless otherwise specified, means calendar year."

Section 6. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) ~~The As used in this chapter,~~ the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in ~~this chapter 39-71-117~~, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as ~~defined~~ described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in ~~this chapter 39-71-117~~, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3,

part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may only be for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term “volunteer hours” means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer’s premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect *an amount of* not less than \$900 a month and not more than 1 1/2 times the *state’s* average weekly wage, ~~as defined in this chapter.~~

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect *an amount of* not less than \$200 a week and not more than 1 1/2 times the *state’s* average weekly wage, ~~as defined in this chapter.~~

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers’ compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the

number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the *state's* average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 7. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, ~~as defined in 39-71-117,~~ and to all employees, ~~as defined in~~

~~39-71-118.~~ An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household ~~and~~ or domestic employment;
- (b) casual employment ~~as defined in 39-71-116~~;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, (2)(k):
 - (i) "freelance correspondent" ~~is~~ means a person who submits articles or photographs for publication and is paid by the article or by the photograph; ~~and As used in this subsection,~~
 - (ii) "newspaper carrier":
 - ~~(i)(A)~~ ~~is~~ means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; ~~but and~~
 - ~~(ii)(B)~~ does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
 - (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);
 - (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by

an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 8. Section 39-71-2211, MCA, is amended to read:

"39-71-2211. Premium rates for construction industry — filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the ~~Montana~~ *state's* average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 9. Section 39-71-2312, MCA, is amended to read:

"39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

~~(2) “Department” means the department of administration provided for in 2-15-1001.~~

~~(3)(2)~~ “Executive director” means the chief executive officer of the state compensation insurance fund.

~~(4)(3)~~ “State fund” means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.”

Section 10. Repealer. Sections 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, and 39-71-813, MCA, are repealed.

Section 11. Directions to code commissioner. Section 39-71-226 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 23.

Section 12. Effective date — applicability. [This act] is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

Section 13. Termination date. [Sections 3 and 4] terminate June 30, 2007.

Approved March 18, 2005

CHAPTER NO. 27

[HB 127]

AN ACT AMENDING THE DEFINITION OF “SERIOUSLY DEVELOPMENTALLY DISABLED” FOR THE PURPOSES OF CIVIL COMMITMENT; REMOVING THE CRITERION OF NEAR TOTAL CARE; AMENDING SECTION 53-20-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

“53-20-102. Definitions. As used in this part, the following definitions apply:

(1) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(2) “Community-based facilities” or “community-based services” means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) “Court” means a district court of the state of Montana.

(4) “Developmental disabilities professional” means a licensed psychologist, a licensed psychiatrist, or a person with a master’s degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(5) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and

(c) ~~has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who, because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services because of:~~

- (i) behaviors that pose an imminent risk of serious harm to self or others; or*
- (ii) self-help deficits so severe as to require total care."*

Section 2. Effective date. [This act] is effective January 1, 2006.

Approved March 18, 2005

CHAPTER NO. 28

[HB 128]

AN ACT PROVIDING THAT THE COMMISSION OR WARRANT OF AN OFFICER IN THE STATE'S ORGANIZED MILITIA MUST BE VACATED IF THE OFFICER IS CONVICTED OF A FELONY OR INCARCERATED IN A STATE OR FEDERAL CORRECTIONAL INSTITUTION; AND AMENDING SECTION 10-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-205, MCA, is amended to read:

"10-1-205. Vacating commissions or warrants. The commission or warrant of an officer ~~shall~~ *must* be vacated:

- (1) upon acceptance by the governor of the resignation of the officer; or
- (2) by an order of the governor discharging the officer:
 - (a) for failure to maintain ~~his~~ *the officer's* qualifications for federal recognition;
 - (b) upon the scheduled or actual termination or withdrawal of ~~his~~ *the officer's* federal recognition ~~where~~ *when* federal recognition is a prerequisite for continued service;
 - (c) upon a change in federal reserve status ~~which~~ *that* makes ~~him~~ *the officer* ineligible ~~to continue assigned~~ *for continued assignment* to a unit of the organized militia;
 - (d) for ~~his~~ *the officer's* absence from duty without leave for more than 3 months; ~~or~~
 - (e) upon the recommendation of a board of examination or the sentence of a court-martial;
 - (f) upon conviction of a felony; or
 - (g) upon final sentencing to confinement in a federal or state penitentiary or correctional institution as defined in 45-2-101."

Approved March 18, 2005

CHAPTER NO. 29

[HB 168]

AN ACT REVISING THE LAWS GOVERNING THE MONTANA INSURANCE GUARANTY ASSOCIATION; REMOVING THE MINIMUM DOLLAR AMOUNT FOR A COVERED PROPERTY OR CASUALTY CLAIM; CLARIFYING THE IMMUNITY WITH RESPECT TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTIONS 33-10-105 AND 33-10-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-10-105, MCA, is amended to read:

"33-10-105. General powers and duties. (1) The association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that ~~is in excess of \$100 and is less than~~ *does not exceed* \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 ~~per~~ *for each* policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a);

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts as are necessary to carry out the purpose of this part;

(e) perform other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities; if, at the end of any calendar year, the board of

directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.”

Section 2. Section 33-10-110, MCA, is amended to read:

“33-10-110. Immunity. There ~~shall be no~~ *is not any* liability on the part of and ~~no~~ *a* cause of action of any nature ~~shall arise~~ *may not be brought* against any member insurer ~~or its agents or employees~~, the association or ~~its insurance producers~~ *the association’s agents or employees*, the board of directors, or the commissioner or ~~his~~ *the commissioner’s* representatives for any action taken by them in the performance of their powers and duties under this part.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 30

[HB 171]

AN ACT CONFORMING WITH FEDERAL INCOME TAX LAW BY EXTENDING THE DUE DATE FOR FILING A MONTANA INDIVIDUAL INCOME TAX RETURN BY A PERSON, AND BY THE PERSON’S SPOUSE, SERVING IN A COMBAT ZONE OR A CONTINGENCY OPERATION; CLARIFYING THE DEFERMENT OF TAXES FOR A PERSON IN MILITARY SERVICE; AMENDING SECTION 15-30-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-313, MCA, is amended to read:

“15-30-313. Soldiers’ and sailors’ relief Deferment of taxes for person in military service — filing of return. (1) The collection from ~~any~~ a person in the military service, as defined by the Soldiers’ and Sailors’ Civil Relief Act of 1940, effective October 17, 1940 ~~section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended October 6, 1942, of any the tax prescribed by the state on the income of such person imposed by 15-30-103, whether falling~~ due prior to or during ~~his~~ *the person’s* period of military service, ~~shall must~~ be deferred for ~~a period extending not more than 6 months~~ *180 days* after the termination of ~~his~~ *the person’s* period of military service if ~~such~~ *the* person’s ability to pay ~~such the~~ tax is materially impaired by reason of ~~such~~ *military* service.

(2) ~~No interest~~ *Interest and penalty* on any amount of tax, ~~collection of which that is deferred for any period under this section and 15-30-314 or this section, and no penalty for nonpayment of such amount during such period shall~~ *may not* accrue for ~~such the~~ period of deferment by reason of ~~such~~ nonpayment. The running of any statute of limitations against the payment of ~~such the~~ tax by any lawful means ~~shall must~~ be suspended for the period of military service of any ~~individual person~~ for whom the collection of ~~such the~~ tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

(3) *In accordance with the provisions of section 7508 of the Internal Revenue Code, 26 U.S.C. 7508, the individual income tax return of a person, and the person’s spouse, serving in a combat zone or participating in a contingency*

operation is due on or before 180 days after the time of disregarded service plus the disregarded period of qualified hospitalization attributable to an injury suffered while serving in the combat zone or contingency operation.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2003.

Approved March 18, 2005

CHAPTER NO. 31

[HB 175]

AN ACT ALLOWING AN INSURER TO WITHHOLD COURT-ORDERED RESTITUTION FROM BENEFITS PAYABLE TO AN INJURED WORKER CONVICTED OF THEFT OF WORKERS' COMPENSATION BENEFITS; AMENDING SECTION 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-743, MCA, is amended to read:

“39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; ~~or~~

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title; *or*

(d) *for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.*

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; *or*

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not

payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.”

Section 2. Effective date — applicability. [This act] is effective July 1, 2005, and applies to benefits paid on or after July 1, 2005.

Approved March 18, 2005

CHAPTER NO. 32

[HB 185]

AN ACT AMENDING RECLAMATION BOND PROVISIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT PERTAINING TO MINES ON FEDERAL LANDS; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ACCEPT BONDS PAYABLE TO THE STATE OF MONTANA AND A FEDERAL LAND MANAGEMENT AGENCY; AMENDING SECTIONS 82-4-338 AND 82-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-338, MCA, is amended to read:

“82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) *For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.*

(ii) *The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land*

management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the

provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the

permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (8) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(9) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department."

Section 2. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) A bond required to be filed under this part by the operator must be in a form that the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules of the board, and the permit. The bond must be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than \$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds \$1,000 an acre. Upon the cost determination, the bond amount must be set by the department at the cost of restoring the land.

(2) (a) *For open-cut mining operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.*

(b) *The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter*

into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

~~(2)~~(3) In lieu of the bond, the operator may deposit with the department cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs. The penalty of the bond or amount of cash and securities must be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the reclamation has been approved and the bond or security has been released by the department. The bond or security may cover only actual affected land and may be increased or reduced to cover only those acreages as remain unreclaimed.

~~(3)~~(4) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the department may suspend the permit of the operator to conduct operations upon the land described in the permit until the substitution has been made.

~~(4)~~(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

~~(5)~~(6) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements. If the board releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 33

[HB 190]

AN ACT REVISING THE DEFINITION OF "VICTIM" IN LAWS RELATING TO THE RIGHT OF VICTIMS TO ATTEND CRIMINAL PROCEEDINGS; MAKING THE DEFINITION CONSISTENT WITH ASSAULT AND PARTNER OR FAMILY MEMBER ASSAULT LAWS; AMENDING SECTION 46-24-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-24-106, MCA, is amended to read:

“46-24-106. Crime victims — family members — right to attend proceedings — exceptions. (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth’s family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant’s right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, “victim” means:

(a) a person who suffers loss of property, ~~or~~ *bodily injury, or reasonable apprehension of bodily injury* as a result of:

(i) the commission of an offense;

(ii) the good faith effort to prevent the commission of an offense; or

(iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

(b) a member of the immediate family of a homicide victim.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to crimes committed before [the effective date of this act].

Approved March 18, 2005

CHAPTER NO. 34

[HB 195]

AN ACT REVISING LAWS GOVERNING FARM SCALES; PROVIDING A DEFINITION OF “ON-FARM SCALE”; CLARIFYING THE LICENSE RENEWAL DATE FOR ON-FARM SCALES; CLARIFYING LICENSE RENEWAL PERIODS FOR ON-FARM SCALES AND OTHER WEIGHING DEVICES; PROVIDING FOR LATE FEES FOR DELAYED LICENSE RENEWALS; PERMITTING THE DEPARTMENT OF LABOR AND INDUSTRY TO SEAL AND REMOVE WEIGHING DEVICES FOR FAILURE TO PAY FEES; PROHIBITING USE OF WEIGHING DEVICES REMOVED

FROM SERVICE AND SEALED; AMENDING SECTIONS 30-12-101, 30-12-203, AND 50-50-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-12-101, MCA, is amended to read:

“30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) “Barrel”, when used in connection with fermented liquor, means a unit of 31 gallons.

(2) “Commerce”, “trade”, or “commercial” means a monetary or value exchange between parties for merchandise or services.

(3) “Commodity in package form” means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in a consumer package form or nonconsumer package form, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) “Consumer package” or “package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) “Cord”, when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) “Intrastate commerce” means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase “introduced into intrastate commerce” defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) “Nonconsumer package” or “package of nonconsumer commodity” means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) “On-farm scale” means a scale that is permanent or mobile, located on a farm or ranch, and used primarily by the owner or operator of the farm or ranch. An on-farm scale may be a livestock scale used for the weighing of live animals, a vehicle scale used for weighing grain, hay, or other field crops, or a combination livestock and vehicle scale.

~~(9)~~(10) “Person” includes individuals, partnerships, corporations, companies, societies, and associations.

~~(10)~~(11) “Sell” and “sale” include but are not limited to barter and exchange.

~~(11)~~(12) “Ton” means a unit of 2,000 pounds avoirdupois weight.

~~(12)~~(13) “Weight”, when used in connection with any commodity, means net weight.

~~(13)~~(14) (a) “Weight”, “measure”, and “weights and measures” mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. The provisions of parts 1 through 5 do not apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

(b) The terms do not include time measuring devices by which products or services are sold.”

Section 2. Section 30-12-203, MCA, is amended to read:

“30-12-203. Licensing of weighing devices. (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by ~~making application~~ *applying* to the department upon ~~blank forms to be a form~~ provided by the ~~division of weights and measures department~~. Each license must require at least one inspection per a year.

(3) An application must be accompanied by the proper fee as established by this section except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	\$12.00
500 pounds through 1,999 pounds	20.00
2,000 pounds through 7,999 pounds	40.00
8,000 pounds through 60,000 pounds	100.00
60,001 pounds or more	175.00

(4) The capacity of a weighing device must be determined by the manufacturer’s rated capacity.

(5) (a) All licenses ~~must be~~ *are* annual and, *except for those described in subsection (5)(b)*, expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) *Licenses for on-farm scales expire at the end of the calendar year.*

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) *for on-farm scales*, before the first day of the sixth month of the year in which the license fee is due; or

(ii) *for all other licenses*, within 60 days of the anniversary date.

(b) *If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.*

~~(c) A person failing to pay the renewal license fee before the first day of the sixth month of the year in which the license fee is due forfeits the right to use the weighing device, and it must be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.~~

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.”

Section 3. Section 50-50-207, MCA, is amended to read:

“50-50-207. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 following the date of issue unless canceled for cause.

(2) License renewals provided for in 16-11-122, 30-12-203(5)(a), ~~50-50-207~~ 50-50-201, 80-7-106, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302.”

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to weighing devices licensed or renewed on or after [the effective date of this act].

Approved March 18, 2005

CHAPTER NO. 35

[HB 205]

AN ACT REQUIRING THAT BOND FORFEITURES IN A FELONY CASE BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 46-9-511, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-511, MCA, is amended to read:

“46-9-511. Forfeiture procedure. When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail *in a misdemeanor case, as defined in 45-2-101*, the court shall pay the money to the treasury of the city or county where the money was posted; ~~or~~

(2) *if money has been posted as bail in a felony case, as defined in 45-2-101, the court shall pay the money to the department of revenue for deposit in the state general fund; or*

~~(2)(3)~~ if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid ~~into the treasury of the city or county where the case is pending as provided under subsection (1) in a misdemeanor case or under subsection (2) in a felony case.~~

~~(3)(4)~~ If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 18, 2005

CHAPTER NO. 36

[HB 226]

AN ACT CHANGING THE NAME OF THE SHERIFF'S DEPARTMENT TO THE SHERIFF'S OFFICE; AND AMENDING SECTIONS 2-15-1781, 7-3-1344, 7-4-2503, 7-4-2508, 7-4-2509, 7-4-2510, 7-4-3001, 7-32-2102, 7-32-2126, 10-4-102, 19-7-612, 19-7-801, 39-3-406, 40-6-402, 44-2-401, 44-5-506, AND 45-8-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security patrol officers and investigators. (1) There is a board of private security patrol officers and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

- (a) one contract security company, as defined by 37-60-101;
- (b) one proprietary security organization, as defined by 37-60-101;
- (c) one city police department;
- (d) one county sheriff's ~~department~~ office;
- (e) one member of the public;
- (f) one member of the peace officers' standards and training advisory council; and
- (g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members ~~shall~~ must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 7-3-1344, MCA, is amended to read:

"7-3-1344. Prior rights of law enforcement officers. (1) A police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county or a deputy sheriff employed by the county sheriff's ~~department~~ office prior to the election and qualification of a commission under part 12 and this part has the same job tenure rights as though the election and qualification had not taken place.

(2) A police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part must be continued as a retirement fund for the police department of the municipality, subject, however, to the prior vested rights of a police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part.

(3) The board of trustees of the police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who must be selected by a majority vote of the members of the police department on the active list of the municipality. The selection must be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms.

(4) Except as provided in this section, the police retirement fund must be continued and administered in the manner prescribed by law for retirement funds established in cities and towns."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's ~~department~~ office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a

year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 4. Section 7-4-2508, MCA, is amended to read:

“7-4-2508. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (2)(a) according to a rank structure in the ~~department~~ office.

(3) For purposes of this section, the term “compensation” means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.”

Section 5. Section 7-4-2509, MCA, is amended to read:

“7-4-2509. Sheriff’s ~~department~~ office — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff’s ~~department~~ office may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of ~~his~~ the regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.”

Section 6. Section 7-4-2510, MCA, is amended to read:

“7-4-2510. Sheriff’s ~~department~~ office — longevity payments. Beginning on the date of ~~his~~ the deputy sheriff’s or undersheriff’s first anniversary of employment with the ~~department~~ office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the ~~department~~ office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment ~~shall~~ must be made in equal monthly installments.”

Section 7. Section 7-4-3001, MCA, is amended to read:

“7-4-3001. Office of sheriff. The duties and functions of the sheriff’s ~~department~~ office are provided for in Title 7, chapter 32, part 21, ~~chapter 32.~~”

Section 8. Section 7-32-2102, MCA, is amended to read:

“7-32-2102. Undersheriff to be appointed — return to other duties. (1) The sheriff, as soon as possible after ~~he enters upon the duties of his~~ taking office, ~~must shall~~, except in counties of the seventh class, appoint ~~some person~~ an undersheriff to ~~hold during~~ serve at the pleasure of the sheriff. ~~Such~~ The undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) ~~must shall~~ resume other duties within the sheriff's ~~department office~~, while maintaining his tenure and seniority, if the sheriff appoints another to succeed ~~him the deputy sheriff~~ as undersheriff. Upon the return to the position of deputy sheriff, ~~such the person shall~~ must be paid the same salary ~~he the person~~ would have received had ~~he the person~~ not taken the undersheriff position."

Section 9. Section 7-32-2126, MCA, is amended to read:

"7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance ~~shall must~~ be paid for from county funds and ~~shall must~~ provide full comprehensive and collision coverage plus minimum coverage of \$100,000 for each person for bodily injury and medical expenses, \$300,000 for all persons per accident, and \$50,000 per accident for property damage.

(2) This section ~~shall~~ does not apply to counties furnishing motor vehicles to the sheriff's ~~department office~~ pursuant to the provisions of 7-32-2125."

Section 10. Section 10-4-102, MCA, is amended to read:

"10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

- (a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;
- (b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;
- (c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;
- (d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and
- (e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's ~~departments offices~~, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 11. Section 19-7-612, MCA, is amended to read:

"19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of

the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's ~~department~~ office. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 12. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's ~~department~~ office or from a county sheriff's ~~department~~ office to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an

optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 13. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment

primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's ~~department~~ *office* who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents

the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 14. Section 40-6-402, MCA, is amended to read:

"40-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a fire department organized by a city, town, or city-county consolidated local government under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police *department*, ~~or a sheriff's department office~~, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

Section 15. Section 44-2-401, MCA, is amended to read:

"44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police *department*, ~~or sheriff's department office~~, or other law enforcement authority must be given a form, supplied by the department of justice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form ~~should~~ *may* be signed by a relative of the missing person and taken to the dentist of the missing person, who ~~must~~ *shall* release the dental records or copies ~~thereof of the records~~ to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies ~~thereof of the records~~ obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that *he a missing person* has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.”

Section 16. Section 44-5-506, MCA, is amended to read:

“44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

- (a) municipal police departments;
- (b) sheriff’s ~~departments~~ *offices*; and
- (c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.”

Section 17. Section 45-8-108, MCA, is amended to read:

“45-8-108. Definitions. As used in 45-8-107 through 45-8-109, unless the context requires otherwise, the following definitions apply:

(1) “Civil disorder” means a public disturbance involving unlawful acts of violence by a group of two or more persons that causes an immediate danger of or results in injury to the property or person of any other individual.

(2) “Governmental military force” means:

- (a) the national guard as defined in 10 U.S.C. 101;
- (b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included in the definition of the national guard; and
- (c) the armed forces of the United States.

(3) “Law enforcement agency” means a department of public safety, a police department, a sheriff’s ~~department~~ *office*, the highway patrol, or a governmental unit of one or more persons employed by the state or federal government or a political subdivision of the state or federal government, for the purpose of detecting and preventing crime and enforcing laws or ordinances, whose employees are authorized to make arrests for crimes while acting in the scope of their authority.

(4) “Peace officer” has the meaning given in 45-2-101.”

Section 18. Name change — directions to code commissioner. Wherever a reference to a sheriff’s department appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to a reference to a sheriff’s office.

Approved March 18, 2005

CHAPTER NO. 37

[HB 274]

AN ACT AMENDING THE MONTANA AGRICULTURAL FEED LAWS TO INCREASE LICENSING AND REGISTRATION FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING, REGISTRATION, AND

INSPECTION FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-202, 80-9-206, AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-101, MCA, is amended to read:

“80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) “AOAC international” means the association of official analytical chemists.

(2) “Brand name” means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) (a) “Commercial feed” means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) “Contract feeder” means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person’s remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) “Customer formula feed” means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) “Distribute” means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) “Distributor” means a person who distributes commercial feed.

(8) “Drug” means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9) “Facility” means something that is built, installed, or established to serve a particular purpose.

(10) “Feed ingredient” means each of the constituent materials making up a commercial feed or a noncommercial feed.

(11) “Guarantor” means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

~~(10)~~(12) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

~~(11)~~(13) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

~~(12)~~(14) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

~~(13)~~(15) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(14)~~(16) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

~~(15)~~(17) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(16)~~(18) "Percent" or "percentage" means percentage by weights.

~~(17)~~(19) "Person" means an individual, partnership, corporation, or association.

~~(18)~~(20) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(19)~~(21) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(20)~~(22) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(21)~~(23) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(22)~~(24) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(23)~~(25) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(24)~~(26) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-201, MCA, is amended to read:

"80-9-201. Licenses and registration. (1) Except as provided in subsection (4)(b), a license is required of a *facility or person*:

- (a) who manufactures commercial feed in this state;
- (b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility *or person* that manufactures, distributes, or is a guarantor for commercial feed ~~need~~ *must* be licensed ~~only~~ once annually pursuant to this section.

(b) (i) ~~All~~ *Except as provided in this subsection (2)(b)(i), all* new applicants shall pay a nonrefundable fee of ~~\$75~~ *\$100* ~~per each~~ calendar year for a license for each facility, ~~distribution point, or point of invoicing.~~ *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$100 a year or more than \$110 a year.*

(ii) ~~License~~ *Except as provided in this subsection (2)(b)(ii), license* renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of ~~\$50~~ *\$75* for each license. *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$75 a year or more than \$85 a year.*

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

(a) the applicant's name and place of business;

(b) the mailing address and physical location of the facility to be licensed; ~~and~~

(c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; *and*

(d) *an indication of whether or not the person applying for licensure is a guarantor.*

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until canceled by the licensee or by the department for cause. The department may collect a \$25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable, and license fees are nonrefundable.

(b) A license is not required for a distributor who distributes only pet food or specialty pet food.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

(a) a list of feed products;

(b) all labeling, promotional material, and claims for any feed product;

(c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and

(d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

(6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty pet food that has not been registered under this section by the manufacturer *or the guarantor.* ~~The~~ *Except as provided in this subsection (6)(a), the* application for registration must be accompanied by a

nonrefundable fee of ~~\$25~~ \$50 for each pet food or specialty pet food. *The department may by rule adjust the registration fee to maintain adequate funding for the administration of this part. The fee may not be less than \$50 a year or more than \$60 a year.*

(b) The registration of pet food and specialty pet food is for a period of 1 year ~~commencing~~ starting January 1 and ending December 31 of each year.

(7) An applicant for registration of a pet food or specialty pet food shall file with the department the following information:

(a) the applicant's name and address; and

(b) a complete standard list of all products being registered.

(8) The department may refuse registration of a pet food or specialty pet food *that is* not in compliance with this chapter and may cancel any registration subsequently found *to not to* be in compliance with this chapter. A registration may not be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend the application in order to comply with this chapter."

Section 3. Section 80-9-202, MCA, is amended to read:

"80-9-202. Labeling. (1) A commercial feed, except a customer formula feed, must be accompanied by a label containing:

(a) the quantity statement;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by AOAC international.

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients ~~which~~ *that* perform a similar function, or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer, ~~or~~ the person responsible for distributing the commercial feed, *or the guarantor*;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements ~~which~~ *that* the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A customer formula feed must be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer *or guarantor*;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all customer formula feed containing drugs. The department may by rule require directions for the use of other customer formula feeds when necessary for their safe and effective use.

(f) precautionary statements ~~which~~ *that* the department by rule determines are necessary for safe and effective use of the feeds;

(g) in cases when a drug-containing product is used in a customer formula feed:

(i) the purpose of the drug in the form of a claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture, expressed in accordance with the association of American feed control officials model feed regulations, as published in that organization's official publication and adopted by department rule."

Section 4. Section 80-9-206, MCA, is amended to read:

"80-9-206. Inspection fees — filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

(b) ~~The~~ *Except as provided in this subsection (1)(b), the* inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same organization are exempt. *The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.*

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site, but is responsible for any unpaid inspection fees on commercial feed purchased by that person and on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(2) Each person who holds a license as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year ~~(January 1 through December 31)~~ and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license.”

Section 5. Section 80-9-301, MCA, is amended to read:

“80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in a factory, warehouse, establishment, or vehicle. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours’ notice prior to the inspection and must be accompanied by the owner or the owner’s representative. However, the department’s authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.

(3) Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

(4) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

(7) The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official

sample ~~as defined in 80-9-101(15) and~~ obtained and analyzed as provided for in subsections (4) through (6) of this section.

(9) All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis.”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 38

[HB 300]

AN ACT REVISING THE INSURANCE PRODUCER AND CONSULTANT CONTINUING EDUCATION ACT TO INCLUDE ADJUSTERS; AND AMENDING SECTIONS 33-17-1201, 33-17-1202, 33-17-1203, 33-17-1204, AND 33-17-1205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-1201, MCA, is amended to read:

“33-17-1201. Short title. This part may be cited as the “Insurance Producer, *Adjuster*, and Consultant Continuing Education Act”.”

Section 2. Section 33-17-1202, MCA, is amended to read:

“33-17-1202. Purpose. The purposes of this part are to:

(1) protect insurance consumers and dedicated insurance producers, *adjusters*, and consultants by requiring continuing education for insurance producers, *adjusters*, and consultants;

(2) better educate insurance producers, *adjusters*, and consultants about changes in insurance law, products, ethical conduct as an insurance producer, *adjuster*, or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials.”

Section 3. Section 33-17-1203, MCA, is amended to read:

“33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer, *adjuster*, or ~~as a~~ consultant other than a person licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or limited lines credit insurance;

(c) a person licensed as an insurance producer, *adjuster*, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer, *adjuster*, or consultant completes more credit hours of approved continuing education in a biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next biennium.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

- (a) a person holding a temporary license issued under 33-17-216; or
- (b) an insurance producer, *adjuster*, or consultant otherwise exempted by the commissioner.”

Section 4. Section 33-17-1204, MCA, is amended to read:

“33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the Montana association of insurance and financial advisors, one representative of the professional insurance agents of Montana, *one representative of the Montana state adjusters association*, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.”

Section 5. Section 33-17-1205, MCA, is amended to read:

“33-17-1205. Compliance — failure to comply — rulemaking authority. (1) Each person subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding biennium.

(2) If a person fails to comply with this section, the person’s license lapses.

(3) In the continuing education affidavit, an insurance producer *or adjuster* shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer *or adjuster* in another jurisdiction or by another governmental agency in this state. As used in this subsection, “final disposition of any criminal action” means a plea agreement or sentence and judgment.

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits.”

Approved March 18, 2005

CHAPTER NO. 39

[HB 381]

AN ACT REQUIRING THAT A WORKERS’ COMPENSATION CLAIMANT AND THE INSURER OR AN AUTHORIZED THIRD-PARTY EXAMINER ATTEND ANY SCHEDULED MEDIATION CONFERENCE IN PERSON OR PARTICIPATE BY TELEPHONE CONFERENCE CALL; AND AMENDING SECTIONS 39-71-2410 AND 39-71-2411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2410, MCA, is amended to read:

“39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers’ compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(7)(e)(8)(c), mediation proceedings ~~are~~ *must be*:

- (a) held in private;
- (b) informal and held without a verbatim record; and
- (c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all *persons* but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) ~~Neither the~~ *The mediator's report nor and any of the information or recommendations contained in it the report* are *not* admissible as evidence in any action subsequently brought in any court of law.

(5) ~~Notwithstanding subsections (1) through (4),~~ *Subsections (1) through (4) do not prohibit a mediator may issue from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411."*

Section 2. Section 39-71-2411, MCA, is amended to read:

"39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) *The claimant and an employee of the insurer or an authorized third-party examiner with settlement authority shall attend any scheduled mediation conference in person or shall participate by telephone conference call.*

(4)(5) The mediator shall request that each party offer *an* argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

~~(5)(6)~~ (6) After the parties have presented all their information and ~~argument~~ *arguments* to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

~~(6)(7)~~ (7) A party shall notify the mediator within 25 days of the mailing of the mediator's report *as to* whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

~~(7)(8)~~ (8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection ~~(7)(e)~~ (8)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator;
or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Approved March 18, 2005

CHAPTER NO. 40

[HB 14]

AN ACT BENEFITING MOUNTAIN GOATS BY ALLOWING THE ANNUAL ISSUANCE OF ONE MOUNTAIN GOAT LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MOUNTAIN GOATS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Auction or lottery of mountain goat license — rules. (1)

The commission may issue one mountain goat license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization involved in the conservation of mountain goats may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain goats. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of mountain goats.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 41

[HB 20]

AN ACT REVISING THE PROCESS FOR DETERMINING THE ELIGIBILITY OF CHILDREN FOR ADMITTANCE TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; AMENDING SECTION 20-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-104, MCA, is amended to read:

“20-8-104. Eligibility of children for admittance. Upon proper application for admittance, as prescribed by the rules of the board of public education, and either pursuant to an individualized educational plan developed jointly by a child’s local educational agency and the Montana school for the deaf and blind or by direct application by the child’s parents, hearing impaired or visually impaired children who are not more than 21 years of age residing within the state of Montana and nonresident children who are not more than 21 years of age may be admitted to the Montana school for the deaf and blind if the child’s local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child. In order to be eligible for services from the Montana school for the deaf and blind, a child may not yet have reached 22 years of age and must be identified as deaf, hearing impaired, or visually impaired pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1414.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 42

[HB 24]

AN ACT PROVIDING THAT A STATEMENT, AFFIRMATION, GESTURE, OR CONDUCT EXPRESSING APOLOGY, SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, OR BENEVOLENCE RELATING TO THE PAIN, SUFFERING, OR DEATH OF A PERSON THAT IS MADE TO THE PERSON, THE PERSON’S FAMILY, OR A FRIEND OF THE PERSON OR OF THE PERSON’S FAMILY IS INADMISSIBLE FOR ANY PURPOSE IN A CIVIL ACTION FOR MEDICAL MALPRACTICE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of apology, sympathy, or benevolence — not admissible as evidence of admission of liability for medical malpractice. (1) A statement, affirmation, gesture, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence relating to the pain, suffering, or death of a person that is made to the person, the person’s family, or a friend of the person or of the person’s family is not admissible for any purpose in a civil action for medical malpractice.

(2) As used in this section, the following definitions apply:

(a) “Apology” means a communication that expresses regret.

(b) “Benevolence” means a communication that conveys a sense of compassion or commiseration emanating from humane impulses.

(c) “Communication” means a statement, writing, or gesture.

(d) “Family” means the spouse, parent, spouse’s parent, grandparent, stepmother, stepfather, child, grandchild, sibling, half-sibling, or adopted children of a parent of an injured party.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 43

[HB 25]

AN ACT PROVIDING THAT FOR PURPOSES OF A MALPRACTICE CLAIM, A HEALTH CARE PROVIDER IS NOT LIABLE FOR AN ACT OR OMISSION BY A PERSON OR ENTITY THAT WAS NOT AN EMPLOYEE OR AGENT OF OR OTHERWISE UNDER THE CONTROL OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Health care provider's responsibility for others. For purposes of a malpractice claim, as defined in 27-6-103, a health care provider, as defined in 27-6-103, is not liable for an act or omission by a person or entity that was not an employee or agent of or otherwise under the control of the health care provider at the time that the act or omission occurred. This section does not absolve a health care provider from liability under 27-1-703.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27 apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to malpractice claims that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 44

[HB 26]

AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME

THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-10-103, MCA, is amended to read:

“28-10-103. Actual versus ostensible agency — limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be ~~his~~ the principal's agent ~~who~~ when that person is not really employed by ~~him~~ the principal.

(2) *Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.*

(3) *Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations.”*

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Applicability. [This act] applies to malpractice claims that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 45

[HB 39]

AN ACT ABOLISHING UNNECESSARY LIMITS ON THE OUT-OF-STATE PURCHASE OF RIFLES AND SHOTGUNS BY MONTANA RESIDENTS AND BY NONRESIDENTS IN MONTANA; AND REPEALING SECTIONS 45-8-341 AND 45-8-342, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 45-8-341 and 45-8-342, MCA, are repealed.

Approved March 24, 2005

CHAPTER NO. 46

[HB 50]

AN ACT DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AMEND THE STATE LIST OF ENDANGERED SPECIES TO

REMOVE ANY SPECIES OR SUBSPECIES ON THE LIST, WITHOUT LEGISLATIVE APPROVAL, IF THAT SPECIES OR SUBSPECIES IS REMOVED FROM THE FEDERAL LIST OF NATIVE ENDANGERED SPECIES; AMENDING SECTION 87-5-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-107, MCA, is amended to read:

“87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations ~~but not later than 1 year after July 1, 1973,~~ the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state ~~which that~~ are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States’ list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States’ list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as ~~such that~~ list may be modified ~~hereafter~~.

(2) (a) ~~The department shall conduct a review of the state list of endangered species within not more than 2 years from its effective date and every 2 years thereafter. The department may propose specific legislation to amend the list by such additions or deletions as that are deemed considered appropriate and at such times as that are deemed considered appropriate.~~

(b) *Whenever a species or subspecies is removed from the United States’ list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.*

(3) Except as otherwise provided in this part, it ~~shall be~~ is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States’ list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States’ list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as ~~such that~~ list may be modified ~~hereafter~~.

(4) Any species or subspecies of *fish and* wildlife appearing on any of the ~~foregoing enumerated lists which enters that is brought into~~ the state from another state or from a point outside the territorial limits of the United States

and ~~which~~ *that* is transported across the state destined for a point beyond the state may ~~be so entered and be brought into the state and~~ transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) ~~In the event~~ *If* the United States' list of endangered native fish and wildlife is modified ~~subsequent to July 1, 1973, by additions or deletions, such~~ *the* modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts ~~such the~~ *the* modification for the state."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 47

[HB 54]

AN ACT ALLOWING THE PAYMENT OF ALL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; ALLOWING THE PAYMENT OF CERTAIN LICENSING FEES BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; AND AMENDING SECTIONS 15-1-231 AND 30-16-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-231, MCA, is amended to read:

"15-1-231. Payment of ~~individual income~~ taxes by credit card and other commercially acceptable means. (1) The department may accept payment *of any tax that it administers, including penalties, interest, and fees*, by credit card, debit card, or other commercially acceptable means ~~from a person making a payment to the department of individual income taxes, including penalties, interest, and fees.~~

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax liability is not discharged and the person has not paid the tax until the department receives payment or credit from the financial institution or credit card company responsible for making the payment or credit and the payment or credit is not subsequently charged back to the state by the financial institution or credit card company. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the taxpayer, unless the payment or credit is subsequently charged back to the state by the financial institution or credit card company.

(b) Upon notice of nonpayment, the department may charge the person who attempted the payment of the tax a fee not to exceed the costs of processing the claim for payment of the tax. The amount of the fee must be added to the tax due and is collected in the same manner as the tax due.

(3) The taxpayer shall pay all fees required by a financial institution or credit card company for a payment made pursuant to this section."

Section 2. Section 30-16-301, MCA, is amended to read:

“30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

- (a) an anniversary date for license renewal that is set by the board of review;
- (b) an electronic means of verifying the information required in the license application; and
- (c) ~~credit card discounts in relation to payment of fees~~ required for licensure by credit card, debit card, or other commercially acceptable means as provided in 15-1-231.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review.”

Approved March 24, 2005

CHAPTER NO. 48

[HB 56]

AN ACT MAKING PERMANENT THE FISHING ACCESS ENHANCEMENT PROGRAM, WHICH PROVIDES INCENTIVES TO LANDOWNERS WHO GRANT ACCESS TO OR ACROSS PRIVATE LAND FOR PUBLIC FISHING, BY REPEALING THE PROGRAM TERMINATION DATE; PROVIDING FOR BIENNIAL REPORTS REGARDING PROGRAM SUCCESS AND RECOMMENDATIONS BY THE REVIEW COMMITTEE; AMENDING SECTION 87-1-269, MCA; AND REPEALING SECTION 6, CHAPTER 196, LAWS OF 2001.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-269, MCA, is amended to read:

“87-1-269. (Temporary) Report required — review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ each legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success

on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(b) The review committee shall report to the governor and to ~~the 58th~~ each legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. ~~(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)~~”

Section 2. Repealer. Section 6, Chapter 196, Laws of 2001, is repealed.

Section 3. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then:

- (1) [section 1 of this act] is void;
- (2) 87-1-269 is repealed; and
- (3) 37-47-201 is amended to read:

“37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards, guide standards, and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(d) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(e) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks ~~or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.~~

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(7) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (5)(e)."

Approved March 24, 2005

CHAPTER NO. 49

[HB 64]

AN ACT PROVIDING FOR QUALIFICATIONS FOR MEDICAL MALPRACTICE EXPERT WITNESSES; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medical malpractice expert witness qualifications. (1) A person may not testify as an expert witness on issues relating to negligence and standards of care and practice in an action on a malpractice claim, as defined in 27-6-103, for or against a health care provider, as defined in 27-6-103, unless the person:

(a) is licensed as a health care provider in at least one state and routinely treats or has routinely treated within the previous 5 years the diagnosis or condition or provides the type of treatment that is the subject matter of the malpractice claim or is or was within the previous 5 years an instructor of students in an accredited health professional school or accredited residency or clinical research program relating to the diagnosis or condition or the type of treatment that is the subject matter of the malpractice claim; and

(b) shows by competent evidence that, as a result of education, training, knowledge, and experience in the evaluation, diagnosis, or treatment of the disease or injury that is the subject matter of the malpractice claim against the health care provider, the person is thoroughly familiar with the standards of care and practice as they related to the act or omission that is the subject matter of the malpractice claim on the date of the incident upon which the malpractice claim is based.

(2) If the malpractice claim involves treatment that is recommended or provided by a physician as defined in 37-3-102, a person may not testify as an expert witness with respect to issues of negligence or standards of care and practice concerning the treatment unless the person is also a physician.

(3) A person qualified as an expert in one medical specialty or subspecialty is not qualified to testify with respect to a malpractice claim against a health care provider in another medical specialty or subspecialty unless there is a showing that the standards of care and practice in the two specialty or subspecialty fields are substantially similar. This subsection (3) does not apply if the subject matter of the malpractice claim against the health care provider is unrelated to the relevant specialty or subspecialty.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Applicability. [This act] applies to causes of action that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 50

[HB 79]

AN ACT MAKING PERMANENT THE HABITAT ACQUISITION PROGRAM THAT AUTHORIZES THE FISH, WILDLIFE, AND PARKS COMMISSION TO SECURE, DEVELOP, AND MAINTAIN WILDLIFE HABITAT; ENSURING THAT PROGRAM FUNDING SOURCES ARE MAINTAINED, INCLUDING SPECIAL LICENSE FEES THAT ARE DEDICATED TO THE PROGRAM; REPEALING SECTION 12, CHAPTER 598, LAWS OF 1987, SECTION 3, CHAPTER 319, LAWS OF 1991, AND SECTIONS 1 AND 2, CHAPTER 241, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 12, Chapter 598, Laws of 1987, section 3, Chapter 319, Laws of 1991, and sections 1 and 2, Chapter 241, Laws of 1993, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 51

[HB 81]

AN ACT REPEALING THE TERMINATION DATE FOR SUPPLEMENTAL GAME DAMAGE LICENSES; REPEALING SECTION 4, CHAPTER 590, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 590, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 52

[HB 82]

AN ACT REPEALING THE TERMINATION DATE FOR EITHER-SEX OR ANTLERLESS ELK PERMITS FOR LANDOWNERS WHO OFFER FREE PUBLIC ELK HUNTING; REPEALING SECTION 4, CHAPTER 519, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 519, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 53

[HB 86]

AN ACT SIMPLIFYING THE APPORTIONMENT OF TAYLOR GRAZING ACT MONEY TO COUNTIES; AMENDING SECTION 17-3-222, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-222, MCA, is amended to read:

“17-3-222. Apportionment of money to counties. (1) ~~It is the duty of the~~ *The state treasurer to properly shall apportion and allocate the money received under 17-3-221 to the county treasurers, who shall appropriate counties and then allocate the money due each county as follows:*

(a) 50% to the *county treasurer for deposit in the* county general fund; and
(b) 50% to the state general fund to be used for the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 54

[HB 97]

AN ACT PROVIDING THAT A CONVICTION FOR NEGLIGENT HOMICIDE WHILE OPERATING A VEHICLE WHEN UNDER THE INFLUENCE OR FOR NEGLIGENT VEHICULAR ASSAULT IS A PRIOR CONVICTION FOR PURPOSES OF THE PENALTY IMPOSED UPON A PERSON WHO IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN

EXCESSIVE ALCOHOL CONTENT AND WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR CERTAIN OFFENSES; INCREASING THE PENALTY FOR A FIFTH OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT; AND AMENDING SECTIONS 61-8-731 AND 61-8-734, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) ~~On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for~~ *Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:*

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

- (d) that the person may not consume alcoholic beverages;
 - (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;
 - (f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;
 - (g) that the person submit to random or routine drug and alcohol testing; and
 - (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.
- (4)(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:
- (a) payment of a fine as provided in 46-18-231;
 - (b) payment of costs as provided in 46-18-232 and 46-18-233;
 - (c) payment of costs of court-appointed counsel as provided in 46-8-113;
 - (d) community service;
 - (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
 - (f) any combination of the restrictions or conditions listed in subsections (4)(a) (5)(a) through (4)(e) (5)(e).
- (5)(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.
- (6)(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 2. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions ~~under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406 for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731~~, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state; or *on* a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, *in* another state, or *on* a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, ~~or 61-8-722, or 61-8-731~~ be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Approved March 24, 2005

CHAPTER NO. 55

[HB 110]

AN ACT CREATING AN IDENTITY THEFT PASSPORT PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Identity theft passport — application — issuance. (1) The attorney general, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state and who has filed a police report citing that the person is a victim of a violation of 45-6-332. A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the police report and the application to the attorney general. The attorney general shall process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

(2) (a) A victim of identity theft may present the victim's identity theft passport issued under subsection (1) to any of the following:

(i) a law enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(ii) any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity; or

(iii) a consumer reporting agency, as defined in 31-3-102, which shall accept the passport as the direct conveyance of a dispute under 31-3-124 and shall

include notice of the dispute in all future reports that contain disputed information caused by identity theft.

(b) Acceptance of the identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subsection (2)(a) is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(3) An application made with the attorney general pursuant to subsection (1), including any supporting documentation, is confidential criminal justice information, as defined in 44-5-103, and must be disseminated accordingly.

(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [section 1].

Approved March 24, 2005

CHAPTER NO. 56

[HB 112]

AN ACT AUTHORIZING AND ENCOURAGING STATE AGENCIES TO ALLOW A STATE EMPLOYEE TO WORK FROM HOME OR AN ALTERNATIVE WORK SITE INSTEAD OF A CENTRAL WORKPLACE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT POLICIES; AMENDING SECTION 2-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Telework authorized and encouraged. (1) An agency may authorize telework for specified employees when it is in the state's best interest as determined and documented by the agency.

(2) The department shall adopt policies to encourage agencies to authorize telework and to provide for the uniform implementation of this section by agencies.

Section 2. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

- (b) overtime;
- (c) fringe benefits as defined in 39-2-903; and
- (d) the longevity allowance provided in 2-18-304.
- (4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

(10) "Department" means the department of administration created in 2-15-1001.

(11) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(12) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(14) "Job sharing" means the sharing by two or more persons of a position.

(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(16) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23) "Short-term worker" means a person who:

- (a) is hired by an agency for an hourly wage established by the agency;
- (b) may not work for the agency for more than 90 days in a continuous 12-month period;
- (c) is not eligible for permanent status;
- (d) may not be hired into another position by the agency without a competitive selection process; and
- (e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(24) *"Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative work site within the state of Montana one or more days a week instead of physically traveling to a central workplace.*

(24)(25) "Temporary employee" means an employee who:

- (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
- (b) performs temporary duties or permanent duties on a temporary basis;
- (c) is not eligible for permanent status;
- (d) is terminated at the end of the employment period; and
- (e) is not eligible to become a permanent employee without a competitive selection process."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 1, and the provisions of Title 2, chapter 18, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 57

[HB 114]

AN ACT EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LAND; AMENDING SECTION 77-1-130, MCA, SECTION 5, CHAPTER 461, LAWS OF 1997, AND SECTION 6, CHAPTER 270, LAWS OF 2001; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-130, MCA, is amended to read:

“77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2006~~ 2011, on a form prescribed by the department. An application must be accompanied by:

- (a) an application fee of \$50;
- (b) a notarized affidavit:
 - (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;
 - (ii) describing the purpose for which the right-of-way was used before 1997; and
 - (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and
- (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or
 - (ii) other evidence of the use of the right-of-way applied for.
- (2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:
 - (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);
 - (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);
 - (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and
 - (d) the deed is approved by the board.
- (3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).
- (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.
 - (b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.
- (5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, ~~2011~~ 2016 ~~sec. 6, Ch. 270, L. 2001.~~)

Section 2. Section 5, Chapter 461, Laws of 1997, is amended to read:

"Section 5. Termination. [This act] terminates October 1, ~~2003~~ 2016."

Section 3. Section 6, Chapter 270, Laws of 2001, is amended to read:

"Section 6. Section 5, Chapter 461, Laws of 1997, is amended to read:

"Section 5. Termination. [This act] terminates October 1, ~~2003~~ ~~2011~~ 2016."

Section 4. Termination. [Section 1] terminates October 1, 2016.

Approved March 24, 2005

CHAPTER NO. 58

[HB 116]

AN ACT REQUIRING THAT SIGNIFICANT CHANGES IN OPERATING BUDGETS AND THAT SIGNIFICANT PROGRAM TRANSFERS BE REPORTED TO THE APPROPRIATE INTERIM COMMITTEE; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. *An explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2.* An explanation of any significant change in agency or program scope,

objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds \$1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than \$25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and \$25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 2. Section 17-7-139, MCA, is amended to read:

“17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. *An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2.* An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds \$1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold.”

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 59

[HB 131]

AN ACT CLARIFYING THE LANGUAGE AND PENALTIES REGARDING THE UNLAWFUL POSSESSION, SHIPPING, TRANSPORTATION, SALE, PURCHASE, OR EXCHANGE OF GAME FISH, BIRDS, GAME ANIMALS,

AND FUR-BEARING ANIMALS; AMENDING SECTIONS 87-1-102, 87-3-111, 87-3-112, 87-3-115, 87-3-117, AND 87-3-118, MCA; AND REPEALING SECTION 87-3-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

“87-1-102. Penalties — violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person’s license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person’s license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than \$200 or more than \$600 or imprisoned in the county detention center for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the county detention center for not more than 6 months, or both.

In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

~~(f) A person convicted of purposely or knowingly taking, killing, possessing, or transporting a trophy animal as described in 87-1-115 or any part of those animals shall be fined an amount not less than \$500 or more than \$3,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 5 years from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.~~

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county detention center for not more than 60 days, or both.

(6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):

- (i) hunting during a closed season;
- (ii) spotlighting;
- (iii) hunting without a license;
- (iv) unlawful taking of more than double the legal bag limit;
- (v) unlawful possession of more than double the legal bag limit; and
- (vi) waste of game by abandonment in the field.

(b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):

- (i) hunting during a closed season;
- (ii) spotlighting;
- (iii) hunting without a license; and
- (iv) unlawful taking of more than double the legal bag limit.

(b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms “knowingly”, “negligently”, and “purposely” have the same meaning as provided in 45-2-101.”

Section 2. Section 87-3-111, MCA, is amended to read:

~~“87-3-111. Unlawful to buy, sell, possess, or transport fish or game possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties.~~ (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport all or part of any game fish, upland game bird, migratory game bird, game animal, or fur-bearing animal ~~that is protected by the laws of this state that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana, except as specifically permitted by the laws of this state.~~

(2) ~~The provisions of this~~ This section ~~do~~ does not prohibit:

~~(a) the possession or transportation within the state of all or part of any legally taken fish, upland game bird, migratory game bird, game animal, or fur-bearing animal;~~

~~(b)(a) the sale, purchase, possession, shipping, or transportation of hides, heads, or mounts of lawfully killed, captured, or taken upland game birds, migratory game birds, game fish, birds, game animals, or fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;~~

~~(c)(b) the possession, shipping, or transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(d)(c) the possession, shipping, or transportation, sale, or purchase of the bones of an elk, antelope, moose, or deer that has been lawfully killed or that has died of from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(e)(d) the donation and sale possession, shipping, or transportation of paddlefish roe as caviar under the provisions of 87-4-601; or~~

~~(f)(e) the possession, shipping, or transportation, sale, or purchase of captive-reared migratory waterfowl.~~

(3) It is unlawful for a person to possess, *ship*, or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within ~~and along~~ the boundaries of the eastern Montana fishing district, as established by ~~the 1994-95~~ commission regulations.

(4) ~~A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the same are found killed, captured, or took the game fish, bird, game animal, or fur-bearing animal.~~

(5) *The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.*

(6) (a) *If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person is subject to the penalties in 87-1-102.*

(b) *If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person who is convicted under this section or who forfeits bond or bail after being charged with a violation of this section shall lose all hunting, fishing, and trapping licenses and permits and license privileges for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, to the department within 10 days of notification by the department."*

Section 3. Section 87-3-112, MCA, is amended to read:

"87-3-112. Possession of unlawfully killed animals and of unlawful use of fishing implements. (1) ~~The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same.~~ The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession ~~the same these implements~~ are found were using the same implements to fish.

(2) ~~It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No~~ A person may *not* unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork."

Section 4. Section 87-3-115, MCA, is amended to read:

"87-3-115. Violation by carriers. ~~No~~ A person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may *not* transport or receive for transportation or carriage or sell or offer for sale any of the ~~game animals fish, game or nongame birds, fish game animals, fur-bearing animals, the skins of fur-bearing animals, or parts thereof,~~

except as specifically provided for by 87-3-114. All *fish*, game or nongame birds, ~~fish~~, game animals, fur-bearing animals, or parts thereof had in possession or ~~which that~~ have been shipped or are being transported in violation of any of the provisions of ~~87-3-113 through 87-3-115 shall~~ 87-3-114 or this section must be seized, confiscated, and disposed of as provided by law."

Section 5. Section 87-3-117, MCA, is amended to read:

"87-3-117. Definitions of lawfully killed, captured, or taken wildlife and unlawfully killed, captured, or taken wildlife. As used in 87-3-111, 87-3-118, and this section, the following definitions apply:

(1) "Lawfully killed, captured, or taken wildlife" means wildlife, as defined in ~~87-5-102, that is killed, captured, or taken or possessed by hunting, fishing, or trapping~~ in conformance with this title and the regulations adopted by the commission, and the rules adopted by the department under authority of this title.

(2) "Unlawfully killed, captured, or taken wildlife" means wildlife that is not lawfully killed, captured, or taken wildlife."

Section 6. Section 87-3-118, MCA, is amended to read:

"87-3-118. Felony Unlawful sale or possession of wildlife game fish, birds, game animals, or fur-bearing animals — penalty. (1) A person commits the offense of unlawful sale of unlawfully taken wildlife a game fish, bird, game animal, or fur-bearing animal if the person purposely or knowingly:

(a) sells, barter, purchases, or exchanges unlawfully taken wildlife for anything of value; or

(b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than \$1,000 if the person purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than \$1,000. The value of the unlawfully taken wildlife game fish, bird, game animal, or fur-bearing animal must be determined from the schedule schedules of restitution values set out in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) (a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) sells, barter, purchases, or exchanges wildlife for anything of value;

(ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than \$1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

~~(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total. This section does not prohibit:~~

~~(a) the sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;~~

~~(b) the sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(c) the sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(d) the donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or~~

~~(e) the sale, purchase, or exchange of captive-reared migratory waterfowl.~~

~~(4) (a) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than \$1,000. If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person shall be fined an amount not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both.~~

~~(b) In addition to the penalties in subsection (4)(a), the person, upon conviction or forfeiture of bond or bail, may lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a period set by the court. The department shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department.~~

~~(5) (a) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction. If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both.~~

~~(b) In addition to the penalties in subsection (5)(a), the person, upon conviction or forfeiture of bond or bail, shall lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department."~~

Section 7. Repealer. Section 87-3-113, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 60

[HB 138]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY TO ESTABLISH SCREENING PANELS FOR DISCIPLINARY MATTERS; AUTHORIZING SCREENING PANELS TO OVERSEE REHABILITATION PROGRAMS; AND AMENDING SECTIONS 37-3-201 AND 37-4-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-201, MCA, is amended to read:

“37-3-201. Organization. (1) (a) The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal in on which appear the words “The Board of Medical Examiners of Montana” and the further words “Official Seal”, and acts, Acts, rules, orders, certificates, and licenses shall must be authenticated by the seal.

(2) *The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203.”*

Section 2. Section 37-4-201, MCA, is amended to read:

“37-4-201. Official seal — organization — subpoena power — screening panel. (1) (a) ~~Said~~ The board shall ~~have~~ adopt an official seal of its own design and shall employ the same seal to authenticate its the board’s acts and records as may be required.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board.

(c) Any member of the board shall have the power to may administer oaths and affirmations, and said the board shall have the power to may hear testimony and subpoena witnesses as with respect to all matters relating to the duties imposed upon it the board by law.

(2) *The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311.”*

Approved March 24, 2005

CHAPTER NO. 61

[HB 139]

AN ACT CLARIFYING PROVISIONS REGARDING RULES AND REGULATIONS OF THE MONTANA NATIONAL GUARD; ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS, INCLUDING

THE UNIFORM CODE OF MILITARY JUSTICE; CLARIFYING THE GOVERNOR'S AND THE ADJUTANT GENERAL'S AUTHORITY TO PRESCRIBE RULES AND REGULATIONS; AND AMENDING SECTIONS 10-1-104 AND 10-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2003~~ 2005, insofar as they are applicable and not inconsistent with the constitution *and laws* of this state *or with a rule or regulation adopted pursuant to 10-1-105*, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2003~~ 2005, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution *and laws* of this state ~~and except as otherwise provided by this title, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or by~~ with a rule or regulation adopted by the department pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Section 2. Section 10-1-105, MCA, is amended to read:

"10-1-105. Rules and regulations by governor and adjutant general.

(1) The governor may prescribe rules to carry out the functions and duties under this title and the constitution of this state. ~~These rules must conform to any applicable federal laws and regulations.~~

(2) The adjutant general may adopt rules *and regulations* governing the armed forces of the state and to carry out the duties of the adjutant general and the duties of the department. ~~The rules must conform to applicable federal laws and regulations."~~

Approved March 24, 2005

CHAPTER NO. 62

[HB 144]

AN ACT UPDATING THE MONTANA INTEGRATED WASTE MANAGEMENT ACT; DEFINING THE TERMS "REUSE" AND "SOURCE REDUCTION"; ESTABLISHING TARGET RATES FOR RECYCLING AND COMPOSTING; AMENDING SECTIONS 75-10-802, 75-10-803, 75-10-804, 75-10-805, AND 75-10-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-802, MCA, is amended to read:

“75-10-802. Definitions. As used in this part, the following definitions apply:

(1) “Composting” means the controlled biological decomposition of organic matter into humus.

(2) “Department” means the department of environmental quality provided for in 2-15-3501.

(3) “Integrated waste management” means the coordinated use of a priority of waste management methods, ~~including waste prevention~~, as specified in 75-10-804.

(4) “Postconsumer material” means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) “Recycling” means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) “Reuse” means using a product in its original form for a purpose that is similar to or different from the purpose for which it was originally designed.

(7) “Source reduction” means the design, manufacture, purchase, or use of a material or product, including packaging, to reduce its amount or toxicity before it enters the solid waste stream.

~~(6)~~(8) “Special waste” means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

~~(7)~~(9) “Waste reduction” means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream ~~after consumer or commercial use but prior to incineration or disposal.~~

Section 2. Section 75-10-803, MCA, is amended to read:

“75-10-803. Solid waste reduction goal and targets ~~target.~~ (1) It is the goal of the state, by January 1, 1996, to reduce by at least 25% the volume of solid waste that is either disposed of in a landfill or incinerated to reduce, through source reduction, reuse, recycling, and composting, the amount of solid waste that is generated by households, businesses, and governments and that is either disposed of in landfills or burned in an incinerator, as defined in 75-2-103.

(2) Targets for the rate of recycling and composting are:

(a) 17% of the state’s solid waste referenced in subsection (1) by 2008;

(b) 19% of the state’s solid waste referenced in subsection (1) by 2011; and

(c) 22% of the state’s solid waste referenced in subsection (1) by 2015.”

Section 3. Section 75-10-804, MCA, is amended to read:

“75-10-804. Integrated waste management priorities. It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) ~~source reduction of waste generated at the source;~~

(2) ~~reuse of waste;~~

- (3) recycling ~~of waste~~;
- (4) composting of biodegradable waste; and
- (5) landfill disposal or incineration.”

Section 4. Section 75-10-805, MCA, is amended to read:

“75-10-805. State government ~~source~~ waste reduction and recycling program. (1) In order to progress toward achieving the waste reduction ~~target~~ *targets* identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a ~~source~~ *waste* reduction and recycling plan ~~by January 1, 1992~~, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, *used oil filters*, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a ~~source~~ *waste* reduction and recycling program ~~by July 1, 1992~~; and

(c) apply computer technology to reduce the generation of waste paper through:

- (i) the use of electronic access systems;
- (ii) the transfer of information in electronic rather than paper form; and
- (iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.”

Section 5. Section 75-10-807, MCA, is amended to read:

“75-10-807. Requirement to prepare and implement state solid waste management plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare and implement a state solid waste management plan in accordance with this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804 ~~in meeting the solid waste reduction target in 75-10-803~~;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.

(4) The department shall conduct hearings as provided in 75-10-111.

(5) The plan must be evaluated every 5 years and updated as necessary.”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 63

[HB 147]

AN ACT DEFINING THE TERM “ROCK PRODUCTS”; ALLOWING A PERSON MINING ROCK PRODUCTS TO OPERATE MULTIPLE SITES MEETING SPECIFIED CRITERIA UNDER A SINGLE PERMIT; AUTHORIZING A LANDOWNER WHO ALLOWS ROCK PRODUCT MINING TO OBTAIN A MULTIPLE-SITE PERMIT; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, AND 82-4-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

“82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Abandonment of surface or underground mining” may be presumed when it is shown that continued operation will not resume.

(2) “Amendment” means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “Cyanide ore-processing reagent” means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) “Department” means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of *the* aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) *“Rock products” means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.*

~~(15)~~(16) (a) “Small miner” means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335~~(2)~~(3) or a permit that meets the criteria of subsection ~~(15)~~(e) (16)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth’s surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(16)~~(17) “Soil materials” means earth material found in the upper soil layers that will support plant growth.

~~(17)~~(18) (a) “Surface mining” means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of

minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(18)~~(19) "Underground mining" means all methods of mining other than surface mining.

~~(19)~~(20) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(20)~~(21) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1)

Except as provided in subsections (3) through (10), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is an individual, that:
 - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
 - (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:
 - (i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund

of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(15)(a)(i) and (15)(a)(ii)~~ *82-4-303(16)(a)(i) and (16)(a)(ii)*.

(8) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(10) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."

Section 3. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. *A Except as provided in subsection (2), a separate operating permit is required for each complex.*

(2) (a) *A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:*

(i) *operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;*

- (ii) have any water impounding structures other than for storm water control;*
- (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;*
- (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or*
- (v) impact significant historic or archaeological features.*

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

~~(2)~~(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

~~(3)~~(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

~~(4)~~(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

- (a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;
- (b) the minerals expected to be mined;
- (c) a proposed reclamation plan;
- (d) the expected starting date of operations;
- (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

~~(5)~~(6) Except as provided in subsection ~~(7)~~ (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

~~(6)~~(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the

permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

~~(7)~~(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

~~(8)~~(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

~~(9)~~(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection ~~(4)(a)~~ (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection ~~(9)(a)(i) or (9)(a)(ii)~~ (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 4. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c) *of this section*. The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to ~~82-4-335(9)~~ 82-4-335(10); and

(iii) the department has found that permit issuance is not prohibited by ~~82-4-335(8)~~ 82-4-335(9) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) *of this section* by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) *of this section* by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is

completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(6) Applications for major amendments must be processed in the same manner as applications for new permits.

(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 5. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by rules of the board and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);
- (e) update the information required in ~~82-4-335(4)(a)~~ 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:
 - (i) the permit area;
 - (ii) the unit of disturbed land;
 - (iii) the area to be disturbed during the next 12-month period;
 - (iv) if completed, the date of completion of operations;
 - (v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
 - (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 64

[HB 154]

AN ACT ELIMINATING CERTAIN ANNUAL REPORTING REQUIREMENTS FOR CONSUMER LOAN BUSINESSES; AND AMENDING SECTION 32-5-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-308, MCA, is amended to read:

"32-5-308. Annual report. (1) A licensee shall *file an annual report* ~~annually~~ before April 15 ~~file a report~~ for the preceding calendar year with the department.

(2) The report ~~shall give~~ *must provide* information with respect to the financial condition of the licensee and ~~shall~~ *must* include:

- (a) the name and address of the licensee;
- ~~(b)~~ *balance sheets at the beginning and end of the calendar year;*
- ~~(c)~~ *a statement of income and expenses;*

- ~~(d) a reconciliation of surplus or net earnings with the balance sheets;~~
 - ~~(e) a schedule of assets used in the consumer loan business;~~
 - ~~(f)~~(c) an analysis of charges, size of loans made, and types of security on loans;
 - ~~(g)~~(d) an analysis of suits and foreclosures; and
 - ~~(h)~~(e) other relevant information the department may reasonably require concerning the business *conducted* during the preceding calendar year ~~of~~ for each licensed place of business ~~conducted by~~ of the licensee in this state.
- (3) The report ~~shall~~ *must* be made under oath and be in a form prescribed by the department. ~~The department which~~ shall publish annually an analysis and summary of the reports.”

Approved March 24, 2005

CHAPTER NO. 65

[HB 155]

AN ACT PROVIDING THAT DISCLOSURES OR CERTAIN CONFLICTS OF INTEREST MUST BE MADE TO THE COMMISSIONER OF POLITICAL PRACTICES RATHER THAN THE SECRETARY OF STATE; AND AMENDING SECTION 2-2-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-131, MCA, is amended to read:

“2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the ~~secretary of state~~ *commissioner of political practices*, listing the amount of private interest, if any, the purpose and duration of the person’s services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.”

Approved March 24, 2005

CHAPTER NO. 66

[HB 157]

AN ACT PROVIDING A FORMULA RATHER THAN A SET INTEREST RATE FOR USE IN DETERMINING THE RATES OF INTEREST TO BE PAID ON MINIMUM NONFORFEITURE AMOUNTS UNDER AN ANNUITY CONTRACT; AMENDING THE CONTRACT CHARGE; ALLOWING A REDUCTION FOR PREMIUM TAX PAID; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-505, MCA, is amended to read:

“33-20-505. (Temporary) Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) ~~With respect to contracts providing for flexible considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to that time at ~~a rate rates~~ of interest of ~~1.5% a year of percentages as indicated in subsection (3)(a) of the net considerations, as described in subsection (2)(b),~~ paid prior to that time, decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at ~~a rate rates~~ of interest of ~~1.5% a year and as indicated in subsection (3)(a);~~

(ii) an annual contract charge of \$50 accumulated at rates of interest as indicated in subsection (3)(a);

(iii) any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued, ~~and increased by existing additional amounts credited by the company to the contract.~~

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount must be an amount ~~not less than zero and must be equal to 87.5% of the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 for each consideration credited to the contract during that contract year. The percentages of net consideration must be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. Regardless of the provisions of the preceding sentence, the percentage must be 65% of the portion of the total net consideration for any renewal contract year that exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.~~

~~(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts must be calculated on the assumption that consideration is paid annually in advance and must be defined in the same manner as for contracts with flexible payments of consideration that are paid annually with two exceptions:~~

~~(a) The portion of the net consideration for the first contract year to be accumulated must be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~

~~(b) The annual contract charge must be the lesser of \$30 or 10% of the gross annual consideration.~~

~~(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined in the same manner as for contracts with flexible payments of consideration, except that the percentage of net~~

~~consideration used to determine the minimum nonforfeiture amount must be equal to 90% and the net consideration must be the gross consideration less a contract charge of \$75.~~

(3) (a) (i) *The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.*

(ii) *The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than 1%.*

(iii) *The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.*

(b) *During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.*

(4) *The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines that adjustments are justified. (Terminates July 1, 2005—sec. 4, Ch. 512, L. 2003.)*

33-20-505. (Effective July 1, 2005) Minimum nonforfeiture amounts.

(1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract ~~shall~~ must be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) ~~With respect to contracts providing for flexible considerations, the~~ *The* minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments ~~shall~~ must be equal to an accumulation up to ~~such that time at a rate~~ rates of interest ~~of 3% a year of percentages as indicated in subsection (3)(a) of the net considerations (as hereinafter defined), as described in subsection (2)(b), paid prior to such that time, decreased by the sum of:~~

(i) any prior withdrawals from or partial surrenders of the contract accumulated at ~~a rate~~ rates of interest ~~of 3% a year~~ as indicated in subsection (3)(a);

(ii) *an annual contract charge of \$50 accumulated at rates of interest as indicated in subsection (3)(a);*

(iii) *any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and*

(iv) *the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.*

(b) *The net consideration for a given contract year used to define the minimum nonforfeiture amount shall must be an amount not less than zero and shall be equal to 87.5% of the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.*

(3) *With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:*

(a) *The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.*

(b) *The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.*

(4) *With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.*

(3) (a) (i) *The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.*

(ii) *The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than 1%.*

(iii) *The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date*

or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.

(b) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.

(4) The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines that adjustments are justified."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date — applicability. [This act] is effective July 1, 2005, and applies to an annuity contract that is entered into or renewed on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 67

[HB 158]

AN ACT REVISING AND CLARIFYING INCOME TAX WITHHOLDING LAWS AS A RESULT OF THE TRANSFER OF THE ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE TAX FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; ELIMINATING THE REQUIREMENT THAT THE STATE TAX APPEAL BOARD CONSIDER A DIRECT APPEAL FROM A DEPARTMENT OF REVENUE DETERMINATION REGARDING THE REPORTING OF WAGES EARNED BY AN UNEMPLOYMENT INSURANCE BENEFIT CLAIMANT; REVISING THE DEFINITIONS OF "EMPLOYEE", "EMPLOYER", AND "WAGES" AND DEFINING "SOLE PROPRIETOR" FOR WITHHOLDING TAX PURPOSES; ADOPTING THE INTERNAL REVENUE CODE DEFINITION OF "WAGES"; REVISING THE EXCEPTIONS TO THE DEFINITION OF "WAGES"; ELIMINATING CERTAIN DEFINITIONS AS THEY APPLY TO INCOME WITHHOLDING TAXES; CLARIFYING THE LIABILITY OF EMPLOYERS FOR FILING ANNUAL WITHHOLDING TAX STATEMENTS AND FOR THE PAYMENT OF WITHHOLDING TAXES; REVISING THE SCHEDULES FOR REMITTING WITHHOLDING TAXES; CLARIFYING PENALTIES AND INTEREST FOR NONCOMPLIANCE WITH WITHHOLDING TAX PROVISIONS; REVISING THE PROVISIONS FOR THE FILING OF WITHHOLDING TAXES ELECTRONICALLY; AMENDING SECTIONS 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-209, 15-30-210, 15-30-248, AND 39-51-2402, MCA; REPEALING SECTIONS

15-30-249, 15-30-250, 15-30-251, 15-30-256, AND 15-30-257, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-302, MCA, is amended to read:

“15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or
- (d) any other matter in which the appeal is provided by law.

(2) ~~(a) Except as provided in subsection (2)(b), the~~ The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department’s final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

~~(b) An appeal from the department’s determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department’s final determination. The board shall promptly mail a copy of the complaint to each interested party at the last known address of each party.~~

(3) The department shall file with the board an answer within 30 days following filing of a complaint, ~~or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(c), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department’s response to each ground for and type of relief demanded in the complaint.~~

(4) ~~(a) Except as provided in subsection (4)(b), the~~ The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

~~(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.~~

~~(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.~~

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.”

Section 2. Section 15-30-201, MCA, is amended to read:

“15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) ~~“Agricultural labor” means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.~~

(2) ~~“Domestic or household service” means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer’s family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.~~

~~(3)~~ (a) “Employee” means:

(i) *an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;*

~~(a)(ii)~~ an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

~~(b)(iii)~~ an officer of a corporation;

~~(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;~~

~~(d)(iv)~~ all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(b) *The term does not include a sole proprietor performing services for the sole proprietorship.*

~~(4)~~(2) “Employer” means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person *or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;*

(b) ~~a person who pays \$1,000 or more in wages within the current calendar year;~~

~~(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;~~

~~(d)~~ any individual or organization *that has or had in its employ one or more individuals performing services for it within this state, including:*

(i) a state government and any of its political subdivisions or instrumentalities;

(ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability company, or ~~a limited liability partnership that has filed with the secretary of state, or~~ domestic or foreign corporation;

(iii) ~~or the~~ a receiver, trustee, including a trustee in bankruptcy, trustee or the trustee's successor; ~~or; or~~

(iv) a legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or

~~(e)(c)~~ any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes, ~~is considered an employer for state income tax withholding purposes or under Title 39, chapter 71, for workers' compensation purposes.~~

(5) "Independent contractor" means an individual who renders service in the course of an occupation and:

~~(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and~~

~~(b) is engaged in an independently established trade, occupation, profession, or business.~~

(6)(3) "Lookback period" means the 12-month period ending the preceding June 30.

(7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

~~(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;~~

~~(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and~~

~~(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.~~

~~(b) The term "wages" does not include:~~

~~(i) the amount of any payment made by the employer for employees, if the payment was made for:~~

~~(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;~~

~~(B) sickness or accident disability under a workers' compensation policy;~~

~~(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or~~

~~(D) death, including life insurance for the employee or the employee's immediate family;~~

~~(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;~~

~~(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;~~

~~(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;~~

~~(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or~~

~~(vi) payments that may not be taxed under federal law.~~

(4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the member of a single-member limited liability company that is a disregarded entity if the member is an individual.

(5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of the Internal Revenue Code, 26 U.S.C. 3401.

(b) The term does not include:

(i) tips and gratuities exempt from taxation under 15-30-111;

(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-111;

(iii) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-101; or

(iv) any amount paid a sole proprietor. (Subsection ~~(7)(b)(v)~~ (5)(b)(i) terminates on occurrence of contingency—sec. 3. Ch. 634, L. 1983.)"

Section 3. Section 15-30-202, MCA, is amended to read:

"15-30-202. Withholding of tax from wages. (1) Each employer, ~~except an independent contractor,~~ making payment of wages ~~for employment as defined in 15-30-256~~ shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department.

(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part.

(3) A disregarded entity and its owner are considered to be a single employer for the purposes of this part."

Section 4. Section 15-30-203, MCA, is amended to read:

"15-30-203. Employer liable for employment withholding taxes and statements. (1) Each employer is liable for the reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this part, and the annual statements required by 15-30-206 and 15-30-207. The payments required by 15-30-204 and the amounts required to be deducted and withheld, plus interest due on the amounts, are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing reports statements to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file reports statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax ~~reports~~ *statements* or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file ~~reports~~ *statements* required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any ~~reports~~ *statements* and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of ~~reports~~ *statements* and the remittance of taxes, penalties, and interest owed under this part,:

(a) *each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;*

(b) *each member of a ~~member-managed~~ limited liability company ~~must be that is treated as a partnership with liability for filing reports and remitting or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest owed extending to each member who was a member at the time the report or taxes were due while a member;~~*

(c) *the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and*

~~(6)(d) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by each manager of a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable, along with the limited liability company, for reports and any statements, taxes, penalties, and interest owed due while a manager.~~

~~(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due.~~

~~(8)(6) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer."~~

Section 5. Section 15-30-204, MCA, is amended to read:

"15-30-204. Reporting and remittance requirements Schedules for remitting income withholding taxes — records. (1) For the purposes of this section, employers *Each employer* shall remit ~~their the~~ taxes in accordance with the appropriate remittance schedule withheld from employee wages as follows:

(a) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall

remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on a ~~"quarterly schedule"~~ *an "annual schedule"* for which the remittance due date is on or before ~~the last day of the month following the close of each calendar quarter~~ *February 28 of the year following payment of wages*.

~~(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.~~

~~(2) (a) Every employer is required to file a report quarterly in the form required by the department.~~

~~(b) The report is due on or before the last day of the month following the close of the calendar quarter.~~

~~(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.~~

~~(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.~~

~~(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.~~

~~(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.~~

~~(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion~~

~~(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).~~

~~(e)(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.~~

~~(d)(4) Except as provided in subsection (3)(g), a~~ *A new employer or an employer with no filing history is subject to the quarterly monthly remittance*

schedule in subsection ~~(1)(e)~~ (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

~~(e)(5) An employer who is subject to the quarterly schedule in subsection (1)(e) may elect to remit payments on a more frequent basis than is required by subsection (1). An employer who is on an annual schedule may elect to remit monthly or quarterly payments.~~

~~(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.~~

~~(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed \$1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28.~~

~~(h)(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.~~

~~(4)(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.~~

~~(5)(8) Each employer shall keep true and accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."~~

Section 6. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.~~

~~(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.~~

~~(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.~~

~~(5) (a) A summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.~~

~~(b) If an employer fails to honor the summons provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.~~

~~(6)(2) In addition to any other penalty provided by law the penalties imposed by 15-1-216, the failure of an employer to furnish a wage and tax statement, as required by 15-30-207(1), subjects the employer to a penalty of \$5 for each failure, with a minimum of \$50.~~

~~(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.~~

~~(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.~~

~~(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.~~

~~(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.~~

~~(11)(3) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed provided for in this part."~~

Section 7. Section 15-30-210, MCA, is amended to read:

"15-30-210. Electronic funds transfer and electronic reporting
Remitting withholding taxes electronically— employer option — timely remittance. (1) ~~An~~ Subject to subsection (2), an employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding electronically. ~~An~~ election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department.

~~(2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a any format established and approved by the department.~~

~~(2) An employer shall obtain the department's prior approval before the employer may remit withholding taxes by electronic funds transfer.~~

~~(3) If an employer remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment."~~

Section 8. Section 15-30-248, MCA, is amended to read:

“15-30-248. Determination of employer status. A final determination by either the department of labor and industry or the workers’ compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of ~~chapter 30, part 2, this chapter~~ is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding. ~~A final decision of the workers’ compensation court may be appealed as provided in 39-71-2904.”~~

Section 9. Section 39-51-2402, MCA, is amended to read:

“39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim, and, on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days’ notice of the time and place of the claimant’s interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party’s last-known address. The 10-day period may be extended for good cause.

(5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer.”

Section 10. Repealer. Sections 15-30-249, 15-30-250, 15-30-251, 15-30-256, and 15-30-257, MCA, are repealed.

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004.

Approved March 24, 2005

CHAPTER NO. 68

[HB 160]

AN ACT CLARIFYING THAT ADMINISTRATION, HEARINGS, INJUNCTION, AND ENFORCEMENT AUTHORITY PROVIDED BY THE DEPARTMENT OF LABOR AND INDUSTRY UNDER BUILDING CONSTRUCTION CODES APPLIES TO PLUMBING, ELECTRICAL, AND ELEVATOR CODES; MAKING THE MISDEMEANOR OFFENSE PROVISIONS OF THE STATE PLUMBING, ELECTRICAL, AND ELEVATOR CODES CONSISTENT WITH THE BUILDING CODE; INCREASING BOILER INSPECTION AND CERTIFICATION FEES HANDLED BY THE DEPARTMENT; AMENDING SECTIONS 50-60-103, 50-60-105, 50-60-109, 50-60-110, AND 50-74-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-103, MCA, is amended to read:

“50-60-103. Administration by department. The department shall administer parts 1 through 4 7 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 7 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4 7;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of the acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups; and

(7) consult with the building codes council, established in 50-60-115, on all rules and interpretations of building code provisions and on the checklist for the

examination of single-family dwelling construction plans provided for in 50-60-118.”

Section 2. Section 50-60-105, MCA, is amended to read:

“50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through ~~4~~ 7 in accordance with the Montana Administrative Procedure Act.”

Section 3. Section 50-60-109, MCA, is amended to read:

“50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state building, *plumbing, elevator, or electrical* code or county, city, or town building code or of any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section is governed by the Montana Rules of Civil Procedure.”

Section 4. Section 50-60-110, MCA, is amended to read:

“50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through ~~4~~ 7 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building, *plumbing, elevator, or electrical* code or county, city, or town building code is guilty of a misdemeanor.”

Section 5. Section 50-74-219, MCA, is amended to read:

“50-74-219. Fee for inspection. (1) Whenever a department inspector inspects a boiler, a fee must be charged and collected by the department prior to issuance of a boiler operating certificate in accordance with the following schedule:

- (a) operating certificate, ~~\$26~~ \$31;
- (b) internal inspection, \$75;
- (c) external inspection:
 - (i) hot water heating and supply, ~~\$30~~ \$35;
 - (ii) steam heating, ~~\$40~~ \$50; and
 - (iii) power boiler, ~~\$55~~ \$70; and
- (d) special inspection, \$50 an hour plus expenses.

(2) If two or more boilers in the same room are inspected at the same time, the total fee imposed for all boilers must be the fee for inspection of one boiler, and the fee is the amount for the type of boiler with the highest fee.

(3) Fees collected under this section must be deposited in ~~a department~~ the state special revenue *fund in an account credited to the department* for administration of the boiler inspection program.”

Section 6. Effective date — applicability. [This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 69

[HB 161]

AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS; REQUIRING INSOLVENT INSURERS TO PROVIDE CLAIM SUMMARY INFORMATION; CLARIFYING THE PENALTY PROVISIONS FOR LATE REPORT FILING BY INSURERS; REMOVING THE MEDICAL PROVIDER OATH REQUIREMENT FOR DOCUMENTING THE PROVISION OF SERVICES; CLARIFYING THE UNINSURED EMPLOYERS' FUND CLAIM REIMBURSEMENT AUTHORITY; UPDATING TERMINOLOGY RELATING TO HOSPITALS; REVISING SUBSEQUENT INJURY FUND ASSESSMENT PROVISIONS; REVISING PLAN NO. 1 APPROVAL CRITERIA; SPECIFYING THAT INTEREST ON PLAN NO. 1 LIQUIDATED SECURITY DEPOSITS IS TO BE USED TO PAY CLAIMS; REQUIRING AN INSURER TO SUBMIT NOTICE OF COVERAGE AND CANCELLATIONS ELECTRONICALLY TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROHIBITING THE SPLITTING OF WORKERS' COMPENSATION RISKS AMONG VARIOUS INSURANCE PLANS; ELIMINATING THE WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL; AMENDING SECTIONS 39-71-306, 39-71-315, 39-71-504, 39-71-704, 39-71-915, 39-71-2105, 39-71-2108, 39-71-2203, 39-71-2204, 39-71-2205, 39-71-2336, 39-71-2337, AND 39-71-2339, MCA; REPEALING SECTION 2-15-1709, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Claim summary and actuarial documentation. If a plan No. 2 insurer becomes insolvent and is placed into receivership, declares bankruptcy, or seeks protection from its creditors, the insurer, upon request of the department, shall submit to the department claim summary and actuary information for the insurer's Montana workers' compensation and occupational disease claims.

Section 2. Section 39-71-306, MCA, is amended to read:

"39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures. (1) Each insurer shall, on or before the 15th day after each state government fiscal quarter ends, file with the department:

(a) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents;

(b) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers; and

(c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.

(2) An insurer that fails to file the summary report *required by this section or the annual paid losses report required in 39-71-201* ~~after a 5-day grace period within 5 days~~ after the date on which ~~the~~ either report is due may be assessed a penalty in an amount of not less than \$250 or more than \$1,000 to be deposited in the workers' compensation administration fund."

Section 3. Section 39-71-315, MCA, is amended to read:

“39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to ~~document, under oath,~~ *certify* the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.”

Section 4. Section 39-71-504, MCA, is amended to read:

“39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to *or on behalf of* an injured employee of the uninsured employer.

(c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement.

(2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of \$50 for each late payment.

(b) Any unpaid balance owed to the fund under this part ~~for penalties or claim reimbursement~~ must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

(c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.

(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b)."

Section 5. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a ~~hospital licensed as a~~ medical assistance facility or a critical access hospital *licensed* pursuant to Title 50, chapter 5, the rate for services is the ~~hospital's~~ usual and customary charge. Fees paid to a ~~hospital licensed as a~~ *licensed* medical assistance facility or *critical access hospital* are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (7), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."

Section 6. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of ~~paid losses reimbursed from~~ *paid* by the fund in the preceding ~~calendar~~ *fiscal* year and the expenses of administration less other *realized* income *that is deposited in the fund*. The total assessment amount to be collected must be allocated among plan

No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable

to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than \$200,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 7. Section 39-71-2105, MCA, is amended to read:

"39-71-2105. Additional proof of solvency — revocation of order. (1)

The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the ~~compensation benefits~~ provided by this chapter ~~and may at any time, upon notice to the employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval.~~

(2) The department may, after providing an opportunity for an administrative review conference to consider information submitted by a plan No. 1 employer, revoke any order of approval upon 20 days' notice to the employer. A decision to revoke approval involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund. A plan No. 1 employer that is dissatisfied with the decision following the administrative review conference may appeal the decision and request a contested case hearing pursuant to 39-71-2401(2).

(3) A decision revoking an order of approval is final unless the employer files an appeal with the department within 20 days of the issuance of the notice. An employer may not continue to self insure after the 20-day period provided for in subsection (2) has expired unless the department is satisfied that the employer has provided sufficient security and financial ability to pay the benefits provided by this chapter. A decision issued pursuant to this subsection involving a plan

No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund."

Section 8. Section 39-71-2108, MCA, is amended to read:

"39-71-2108. Failure of employer to pay compensation benefits — duty of department. Upon the failure of the employer to pay any ~~compensation~~ *benefits* provided for in this chapter upon the terms, ~~and~~ in the amounts, and at the times when the ~~same becomes~~ *benefits become* due and payable, the department shall, upon demand of the person to whom ~~compensation is~~ *benefits are* due, apply any deposits made with the department to the payment of the ~~same~~ *benefits*, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient ~~thereof deposits into cash and to pay the same upon~~ the liabilities of the employer accruing under the terms of this chapter, ~~and the~~. The department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds ~~which that~~ may be given by the employer to ~~insure~~ *ensure* the payment of ~~his the~~ employer's liability. ~~To these ends and for these purposes, the~~ The department ~~shall be deemed to be~~ *is considered* the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities. *All interest earnings on liquidated security deposits must be retained by the department for payment of benefits pursuant to this section.*"

Section 9. Section 39-71-2203, MCA, is amended to read:

"39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer;:

(a) the notice to or knowledge of the occurrence of the injury on the part of the insured ~~shall be deemed~~ *constitutes* notice or knowledge, as the case may be, on the part of the insurer;

(b) ~~that~~ jurisdiction of the insured for the purpose of this chapter ~~shall be~~ *is* the jurisdiction of the insurer; and

(c) ~~that~~ the insurer ~~shall is~~ in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against ~~such the~~ insured.

(2) ~~No such~~ A policy ~~shall may not~~ be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments *provided for* in this chapter ~~provided for~~ and that the obligation ~~shall is not be~~ affected by any default of the insured after the injury or by any default in the giving of any notice required by ~~such the~~ policy or by this chapter or otherwise. ~~Such~~ The agreement ~~shall must~~ be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer ~~shall be~~ *is* directly and primarily liable to and will pay directly to the employee or in case of death to ~~his the~~ employee's beneficiaries or major or minor dependents; the compensation, if any, for which the employer is liable.

(4) Every ~~such~~ policy ~~shall must~~ at all times be subject to approval, change, or revision by the department and ~~shall must~~ contain the clauses, agreements, and promises required by this chapter.

(5) *All Montana operations of an employer, as defined in 39-71-117, covered under plan No. 2 must be insured by the same insurer.*"

Section 10. Section 39-71-2204, MCA, is amended to read:

"39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 11. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 12. Section 39-71-2336, MCA, is amended to read:

"39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to

be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. *All Montana operations of an employer, as defined in 39-71-117, covered by compensation plan No. 3 must be insured by the state compensation insurance fund.* The premium must be paid by the employer to the state fund at ~~such times as~~ *that* the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.”

Section 13. Section 39-71-2337, MCA, is amended to read:

“39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund’s notice of coverage.

(3) The department may assess a penalty of no more than \$200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.”

Section 14. Section 39-71-2339, MCA, is amended to read:

“39-71-2339. Cancellation of coverage — twenty days’ notice required. (1) The state fund may cancel an employer’s coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers’ Compensation Act unless a replacement or succeeding insurance policy has been issued. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund’s notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against the state fund if it does not comply with the notice requirement in subsection (1).

(b) The state fund may contest the penalty assessment in a hearing conducted according to department rules.”

Section 15. Repealer. Section 2-15-1709, MCA, is repealed.

Section 16. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 22, and the provisions of Title 39, chapter 71, part 22, apply to [section 1].

Section 17. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 4 and 6 and this section] are effective on passage and approval.

(3) [Sections 9 and 12] apply to policies written or renewed on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 70

[HB 178]

AN ACT REVISING THE LAWS RELATING TO WATER USE; CHANGING THE NAME OF THE WATER RIGHT TRANSFER CERTIFICATE TO THE WATER RIGHT OWNERSHIP UPDATE FORM; CLARIFYING THAT THE DEFINITION OF “APPROPRIATE” MEANS THE USE OF WATER FOR A BENEFICIAL USE; PROVIDING THAT TEMPORARY CHANGES OR LEASES FOR INSTREAM FLOW TO MAINTAIN OR ENHANCE INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IS AN APPROPRIATION; CLARIFYING THAT CERTAIN ACTIONS ON AN APPLICATION FOR A CHANGE IN APPROPRIATION RIGHT ARE THE SAME AS ACTIONS ON AN APPLICATION FOR A PERMIT; CLARIFYING THAT REVOCATION OR MODIFICATION APPLIES TO CHANGES IN APPROPRIATION RIGHTS; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION NOTIFY THE COUNTY CLERK AND RECORDER OF EACH TRANSFER FILED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT PROVIDE AN ADEQUATE SUPPLY OF WATER RIGHT TRANSFER CERTIFICATE FORMS TO EACH COUNTY CLERK AND RECORDER IN THE STATE; ELIMINATING THE REQUIREMENT THAT UPON REQUEST OF THE DEPARTMENT THE COUNTY CLERK AND RECORDER SHALL SEND TO THE DEPARTMENT A COPY OF ANY REALTY TRANSFER CERTIFICATES THAT DISCLOSE A TRANSFER OF WATER RIGHTS; ELIMINATING THE ADJUSTMENT OF FEES TO COVER THE COSTS INCURRED BY THE COUNTY CLERK AND RECORDERS IN PROCESSING WATER RIGHT OWNERSHIP UPDATE FORMS; AMENDING SECTIONS 15-7-305, 15-7-308, 85-2-102, 85-2-117, 85-2-307, 85-2-308, 85-2-310, 85-2-314, 85-2-316, 85-2-421, 85-2-423, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-305, MCA, is amended to read:

“15-7-305. Realty transfer certificate required. (1) The county clerk and recorder shall require the parties to the transaction or their agents or representatives to complete a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed between the parties to it is not affected by failure to comply with the provisions in this part.

(3) (a) Except as provided in 85-2-423, the form of certificate must be prescribed by the department of revenue, and the department shall provide an adequate supply of forms to each county clerk and recorder in the state.

(b) The department shall coordinate with the department of natural resources and conservation and the water court to develop and provide the *water right ownership update* forms ~~required under 85-2-423 and this part~~. *The water right ownership update form must be part of or attached to the realty transfer certificate.*

(4) The clerk and recorder shall prepare a certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department.”

Section 2. Section 15-7-308, MCA, is amended to read:

“15-7-308. Disclosure of information restricted — water right transfer certificate ownership update form exception. (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder’s abbreviated copy of the realty transfer certificate or to the information contained in the *water right transfer certificate ownership update form* prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department’s implementation of the requirements of 85-2-112(3).”

Section 3. Section 85-2-102, MCA, is amended to read:

“85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, (including by stock for stock water), a quantity of water *for a beneficial use*;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; ~~or~~

(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439; or

(e) *temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.*

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439; or

(e) *a use of water through a temporary change or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.*

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) “Political subdivision” means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) “Salvage” means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) “State water reservation” means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) “Substantial credible information” means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) “Water division” means a drainage basin as defined in 3-7-102.

(22) “Water judge” means a judge as provided for in Title 3, chapter 7.

(23) “Water master” means a master as provided for in Title 3, chapter 7.

(24) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, {including by stock for stock water}, a quantity of water *for beneficial use*;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; ~~and or~~

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department

should proceed with the action requested by the person providing the information.

(19) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) “Water division” means a drainage basin as defined in 3-7-102.

(22) “Water judge” means a judge as provided for in Title 3, chapter 7.

(23) “Water master” means a master as provided for in Title 3, chapter 7.

(24) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, (including by stock for stock water), a quantity of water *for beneficial use*; or

(b) in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; or

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) “Certificate” means a certificate of water right issued by the department.

(4) “Change in appropriation right” means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) “Correct and complete” means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) “Declaration” means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) “Developed spring” means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of

discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 4. Section 85-2-117, MCA, is amended to read:

"85-2-117. Water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county

clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates ownership update forms issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.”

Section 5. Section 85-2-307, MCA, is amended to read:

“85-2-307. Notice of application for permit or change in appropriation right. (1) (a) Upon receipt of a correct and complete application for a permit or change in appropriation right, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.”

Section 6. Section 85-2-308, MCA, is amended to read:

“85-2-308. Objections. (1) (a) An objection to an application under this chapter for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

Section 7. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. (1) The department shall grant, deny, or condition an application for a permit *or change in appropriation right* in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant; or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, *may be extended* by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be *denied or* approved in a modified form or upon terms, conditions, or limitations specified by the department ~~or denied~~, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be *denied or* approved in a modified form or upon terms, conditions, or limitations specified by it ~~or that the application should be denied~~, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied; unless a hearing is requested.

(3) The department may cease action upon an application for a permit *or change in appropriation right* and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and *for a permit application* there is not a right to a priority date

based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

- (a) an application is not corrected and completed as required by 85-2-302;
- (b) the appropriate filing fee is not paid;
- (c) the application does not document:
 - (i) a beneficial use of water;
 - (ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124.”

Section 8. Section 85-2-314, MCA, is amended to read:

“85-2-314. Revocation or modification of permit or change in appropriation right. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked. If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right.”

Section 9. Section 85-2-316, MCA, is amended to read:

“85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or

quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams may be allocated at the discretion of the department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A state water reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a state water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a state water reservation.

(b) Upon receiving a notice of intention to apply for a state water reservation, the department shall identify all potential state water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a state water reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete state water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.

(d) The department may by order subordinate a state water reservation to a permit or a certificate for ground water development issued pursuant to this part if:

(i) the permit application or the notice of completion of ground water development was accepted by the department before the date of the order granting the reservation;

(ii) the effect of subordinating the reservation to one or more permits or certificates for ground water development does not interfere substantially with the purpose of the reservation; and

(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.

(e) The department shall by order establish the relative priority of state water reservations approved under this section that have the same day of priority. A state water reservation may not adversely affect any rights in existence at that time.

(10) The department shall, periodically but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not

adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ~~transfer certificate~~ *ownership update form* with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 10. Section 85-2-421, MCA, is amended to read:

"85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership ~~on both the state and local levels~~ by requiring that water right ~~transfers~~ *ownership update forms* be filed with the department and that the department notify the water court ~~and the county clerk and recorder~~ of each ~~transfer~~ *water right ownership update form* filed."

Section 11. Section 85-2-423, MCA, is amended to read:

"85-2-423. Water right ~~transfer certificate~~ *ownership update form*. (1) The chief water judge and the department shall prescribe the form and content of the water right ~~transfer certificate~~ *ownership update form*.

~~(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state."~~

Section 12. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) The transferor of a water right shall file with the department a water right ~~transfer certificate~~ *ownership update form* within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property. If the realty transfer certificate discloses a transfer of water rights, a water right ~~transfer certificate ownership update form~~ must be completed and filed with the department. The recording of the deed or other instrument may not be delayed because of the transfer of the water rights.

~~(3) Upon request of the department, the county clerk and recorder shall send to the department, on a monthly basis, a copy of the clerk and recorder's copy of any realty transfer certificate that discloses a transfer of water rights."~~

Section 13. Section 85-2-426, MCA, is amended to read:

"85-2-426. Fee. (1) The department shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department ~~and the county clerk and recorder~~ of processing the ~~transfer certificate water right ownership update form~~. The fee must be paid at the time of filing of the water right ~~transfer certificate ownership update form~~.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 14. Section 85-2-431, MCA, is amended to read:

"85-2-431. Penalty. (1) The transferor of a water right is responsible for the filing of a water right ~~transfer certificate ownership update form~~ with the department in accordance with 85-2-424.

(2) The transferor of a water right who violates 85-2-424(1) is liable for a civil penalty of not more than \$50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318."

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 71

[HB 180]

AN ACT REVISING CERTAIN PROCEDURES FOR FILING APPLICATIONS WITH THE SECRETARY OF STATE REGARDING THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS; ELIMINATING CERTAIN REQUIREMENTS THAT DUPLICATE COPIES OF CERTAIN APPLICATIONS, CERTIFICATES, AND REGISTRATIONS WITH RESPECT TO THE NAME OF CERTAIN

CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS BE FILED WITH THE SECRETARY OF STATE; SPECIFYING REQUIREMENTS FOR REGISTRATION OF A FOREIGN LIMITED PARTNERSHIP; AMENDING SECTIONS 30-13-204, 30-13-208, 30-13-210, 30-13-212, 32-1-112, 35-1-1309, 35-2-119, 35-2-1109, 35-8-205, 35-8-206, 35-8-212, 35-10-113, 35-10-622, 35-10-627, 35-12-606, 35-12-1302, AND 35-12-1304, MCA; AND REPEALING SECTION 35-1-1207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-204, MCA, is amended to read:

“30-13-204. Filing application for registration — issuance of certificate. (1) ~~One original and one copy of~~ *The applicant shall complete and submit an application for registration of an assumed business name shall be executed and delivered along with all applicable fees to the secretary of state. If the secretary of state finds that the application complies with the provisions of this part, he the secretary of state shall, when all fees have been paid as provided in this part:*

(a) ~~endorse on the original and the copy application the word “filed” and the month, day, and year of the filing thereof date on which the application was filed;~~

(b) ~~file the original application in his the secretary of state’s office; and~~

(c) ~~issue a certificate of registration, to which he shall affix the copy.~~

~~(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.~~

~~(3)(2) The registration of an assumed business name remains in effect until canceled.”~~

Section 2. Section 30-13-208, MCA, is amended to read:

“30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. ~~(1) If the secretary of state finds that the application complies with the provisions of this part and that all fees have been paid, he the secretary of state shall, when all fees have been paid as provided in this part:~~

~~(a)(1) endorse on the original and the copy application the word “filed” and the month, day, and year of the filing thereof date on which the application was filed;~~

~~(b)(2) file the original application in his the secretary of state’s office; and~~

~~(c)(3) issue a certificate of renewal, to which he shall affix the copy.~~

~~(2) The certificate of renewal, together with the copy of the application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.”~~

Section 3. Section 30-13-210, MCA, is amended to read:

“30-13-210. Filing amendment to registration of assumed business name — issuance of certificate. (1) ~~One original and one copy of an amendment to the registration of an assumed business name must be delivered to the secretary of state. The~~ *An application for amended registration of an assumed business name must be filed with the secretary of state and must include but is not limited to the following information:*

(a) *the* complete assumed business name prior to adoption of *the* amendment;

(b) *the* complete new assumed business name, if applicable;

(c) *the* name and address of the registrant, including street name and number of the *registrant's* business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;

(e) if a person ~~or persons having~~ *who has had* an interest in a business with a registered assumed name withdraws or dies, a statement of that ~~fact~~ *the person has withdrawn or died*; ~~and~~

(f) a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration; *and*

(g) *all other information determined by the secretary of state to be necessary.*

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part *and that all applicable fees have been paid*, the secretary of state shall, ~~when all fees have been paid as provided in this part:~~

(a) endorse on the ~~original and the copy~~ *application for amendment* the word "filed" and the month, day, and year of the ~~filing~~ *filing date on which the application for amendment was filed*;

(b) file the original *application for amendment* in the secretary of state's office; and

(c) issue a certificate of amendment, ~~to which the secretary of state shall affix the copy.~~

~~(3) The certificate of amendment, together with the copy of the amendment required in subsection (1), must be returned to the registrant.~~

~~(4)(3) The failure of~~ *If the registrant of an assumed business name fails to comply with the requirements of this section, the secretary of state shall cancel results in the cancellation by the secretary of state of the registration."*

Section 4. Section 30-13-212, MCA, is amended to read:

"30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) ~~One original and one copy of The applicant shall complete and submit an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered and all applicable fees to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he the secretary of state shall, when all fees have been paid as provided in this part:~~

~~(a)(1)~~ endorse on the ~~original and the copy~~ *application* the word "filed" and the month, day, and year of the ~~filing thereof~~ *filing date on which the application was filed*;

~~(b)(2)~~ file the ~~original~~ *application* in ~~his~~ *the secretary of state's* office; and

~~(c)(3)~~ issue a certificate of reservation, ~~to which he shall affix the copy.~~

~~(2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."~~

Section 5. Section 32-1-112, MCA, is amended to read:

“32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, ~~35-1-1207~~, and Title 35, chapter 1, part 10, do not apply to banks.”

Section 6. Section 35-1-1309, MCA, is amended to read:

“35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing *on the document* “Filed”, ~~together with the secretary of state’s name, official title, and the date and time of receipt, on the original, the document copy, and the receipt was received by the secretary of state for the filing fee.~~ Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a ~~confirmation~~ *certification* letter to the domestic or foreign corporation or its representative, ~~along with the filing fee receipt or as acknowledgment of receipt if no fee is required that the document has been filed and all applicable fees have been paid.~~

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or ~~its~~ *the corporation’s* representative within 10 days after the document was delivered *to the secretary of state*, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state’s duty to file documents under this section is ministerial. The secretary of state’s filing or refusing to file a document does not:

- (a) affect the validity or invalidity of the document in whole or part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.”

Section 7. Section 35-2-119, MCA, is amended to read:

“35-2-119. Filing requirements. All of the following requirements must be met before a document ~~is entitled to~~ *may* be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name ~~need does not need to~~ be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations ~~need does not need to~~ be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of ~~its~~ *the corporation's* board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature ~~his~~ *the person's* name and the capacity in which the person signs. The document may but ~~need~~ *does not need* to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

~~(a) one copy, except as provided in 35-2-311 and 35-2-829;~~

~~(b)~~ (a) the correct filing fee; and

~~(c)~~ (b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 8. Section 35-2-1109, MCA, is amended to read:

"35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing *on the document* "Filed", ~~together with the secretary of state's name,~~ official title, and the date and the time of receipt, ~~on the original, the copy of the secretary of state received the document, and the receipt for the filing fee.~~ Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver ~~the document copy~~ *a certification letter* to the domestic or foreign corporation or its representative, ~~together with the filing fee receipt or acknowledgment of receipt if no fee is required~~ *as acknowledgment that the document has been filed and the fee has been paid.*

(3) ~~Upon refusing~~ *If the secretary of state refuses* to file a document, the secretary of state shall return ~~it~~ *the document* to the domestic or foreign corporation or its representative within 10 days after the document was delivered, ~~together with~~ *to the secretary of state and include* a brief written explanation of the reason ~~or reasons~~ for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 9. Section 35-8-205, MCA, is amended to read:

“35-8-205. Filing with secretary of state. (1) ~~The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall, when all required filing fees have been paid:~~

(a) ~~endorse on each the signed original and duplicate copy document the word “filed” and the date and time of its acceptance of accepting the document for filing;~~

(b) ~~retain the signed original document in the secretary of state’s files; and~~

(c) ~~return the duplicate copy send a certification letter to the person who filed it the document or to the person’s representative.~~

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.”

Section 10. Section 35-8-206, MCA, is amended to read:

“35-8-206. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are ~~delivered to~~ *filed with* the secretary of state for filing.

(2) ~~Each copy of the~~ *The* articles of organization *that are* stamped “filed” and marked with the filing date ~~is are~~ conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.”

Section 11. Section 35-8-212, MCA, is amended to read:

“35-8-212. License fee Filing fees. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company:

(a) ~~a license an additional filing fee~~ at the time of filing its articles of organization; and

(b) ~~a license an additional filing fee~~ at the time of filing an application for a certificate of authority to transact business.

(2) The fees authorized in this section must be set and deposited in accordance with 2-15-405.”

Section 12. Section 35-10-113, MCA, is amended to read:

“35-10-113. Filing with secretary of state. (1) ~~The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any A signed statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform statement conforms to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:~~

(a) ~~endorse on each the signed original and duplicate copy statement the word “filed” and the date and time of acceptance for filing;~~

(b) ~~retain the signed original statement in the secretary of state’s files; and~~

(c) ~~return the duplicate copy~~ *send a certification letter* to the person who filed ~~it the statement~~ or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires *it*, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2."

Section 13. Section 35-10-622, MCA, is amended to read:

"35-10-622. Statement of dissociation — filing. (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) *If a statement of dissociation is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.*

~~(2)~~(3) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

~~(3)~~(4) For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person *who is* not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed."

Section 14. Section 35-10-627, MCA, is amended to read:

"35-10-627. Statement of dissolution. (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) *If a statement of dissolution is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.*

~~(2)~~(3) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

~~(3)~~(4) For the purposes of 35-10-301 and 35-10-626, a person *who is* not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

~~(4)~~(5) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person *who is* not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business."

Section 15. Section 35-12-606, MCA, is amended to read:

"35-12-606. Filing in the office of the secretary of state. (1) The certificate of limited partnership and of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment, restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary ~~need does not need to~~ exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the document the word "filed" and the ~~day, month, and year of the filing date on which the document was filed;~~

(b) file the ~~original document~~ in the secretary of state's office; and

(c) ~~return the copy~~ send a certification letter to the person who filed it the document or the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended or restated as set forth in the certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled."

Section 16. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership ~~and, if different, the name under which it proposes to transact business and register in this state or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;~~

(2) the state in which ~~it the foreign limited partnership~~ was formed and the date of ~~its the foreign limited partnership's~~ formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint; ~~which.~~ An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if *an agent was* appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of ~~its the foreign limited partnership's~~ organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 17. Section 35-12-1304, MCA, is amended to read:

"35-12-1304. Name. (1) A foreign limited partnership may register with the secretary of state under ~~any a name (whether or not it is the name under which it is registered in its state of organization)~~ that includes the words "limited partnership" and that could be registered by a domestic limited partnership *if the foreign limited partnership name is distinguishable in the records of the secretary of state from:*

(a) *the name of another limited partnership authorized to transact business in this state; and*

(b) *any assumed business name, limited liability company name, limited liability partnership name, corporation, trademark, or service mark registered with the secretary of state.*

(2) *A foreign limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (1)(b). The secretary of state shall authorize use of the name applied for if:*

(a) *the limited partnership that has previously registered the name with the secretary of state consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to change its name to a name that is distinguishable in the records of the secretary of state from the name of the limited partnership that is applying for the name; or*

(b) *the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name for which the applicant applied."*

Section 18. Repealer. Section 35-1-1207, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 72

[HB 183]

AN ACT PERMITTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK A FEDERAL HOME AND COMMUNITY-BASED SERVICES WAIVER OF THE MEDICAID STATE PLAN IN ORDER TO INCREASE FLEXIBILITY IN PROVIDING SERVICES FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN; AND AMENDING SECTIONS 53-6-401 AND 53-6-402, MCA.

WHEREAS, the 58th legislative session in House Joint Resolution No. 13 directed the Department of Public Health and Human Services to conduct a study regarding the health programs administered by the Department and to provide recommendations to the 59th legislative session; and

WHEREAS, the Department formed an advisory committee that examined the structure and values of the state's Medicaid system; and

WHEREAS, the advisory committee advised the Department to seek a home and community-based services waiver from the Secretary of the Department of Health and Human Services for services to seriously emotionally disturbed children.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a

substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) *"Home and community-based services", as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c) and any regulations implementing that statute, means long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings.*

(3)(4) "Long-term care facilities" means facilities that are certified by the department to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities.

(4)(5) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5)(6) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 2. Section 53-6-402, MCA, is amended to read:

"53-6-402. Community-based long-term care facilities medicaid services — powers and duties of department. (1) The department may operate, for persons eligible for medicaid, a program of community-based medicaid services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended.

(2) The department may conduct long-term care preadmission screenings and resident reviews. Long-term care preadmission screenings and resident reviews are required for all medicaid-eligible persons entering long-term care facilities and community-based medicaid services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are is authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act.

(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).

(4) *The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system must strive to incorporate the following components:*

(a) *flexibility in design of the system to attempt to meet individual needs;*

(b) *local involvement in development and administration;*

(c) *encouragement of culturally sensitive and appropriately trained mental health providers;*

(d) *accountability of recipients and providers; and*

(e) *development of a system consistent with the state policy as provided in 52-2-301.*

(4)(5) The department may adopt rules necessary to implement a program of community-based medicaid services *and home and community-based services* and to establish a system of long-term care preadmission screenings and resident reviews as part of that program.”

Approved March 24, 2005

CHAPTER NO. 73

[HB 184]

AN ACT REVISING THE LAWS RELATING TO LIBRARY FEDERATIONS; REMOVING THE DESIGNATION OF FEDERATION HEADQUARTERS LIBRARY; REVISING THE ESTABLISHMENT OF LIBRARY FEDERATIONS; CLARIFYING LIBRARIES' PARTICIPATION IN, AND FUNDING FOR, LIBRARY FEDERATIONS; ESTABLISHING THAT LIBRARY TRUSTEES BE APPOINTED ACCORDING TO FEDERATION BYLAWS; AMENDING SECTIONS 1-11-301, 22-1-103, 22-1-402, AND 22-1-404, MCA; AND REPEALING SECTION 22-1-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-301, MCA, is amended to read:

“1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council, with the advice of the code commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) ~~The One copy of the~~ Montana Code Annotated and supplements, and other subsequent and ancillary publications except annotations, must be provided at no cost to ~~the following:~~

(i) each library designated as a depository library under 22-1-214, ~~one copy;~~

~~(ii) each library designated as a federation headquarters library under 22-1-402, one copy.~~

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Section 2. Section 22-1-103, MCA, is amended to read:

"22-1-103. State library commission — authority. The state library commission may:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state that propose to establish libraries, as to the best means of establishing and improving those libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) (a) accept and expend in accordance with the terms of a grant any grant of federal funds that is available to the state for library purposes;

(b) accept, receive, and administer any gifts, donations, bequests, and legacies made to the Montana state library. Unless otherwise provided by the donor, gifts, donations, bequests, and legacies must be deposited in the Montana state library trust established in 22-1-225.

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds must be disbursed;

(6) provide library services for the blind and for individuals with physical disabilities;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners, develop standards for public libraries, and adopt rules for the certification of librarians;

(9) designate areas for ~~the and establishment of~~ *establish* federations of libraries ~~and designate the headquarters library for the federations."~~

Section 3. Section 22-1-402, MCA, is amended to read:

"22-1-402. Library federations — definition. (1) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public, school, special, college, or university library or town, city, or county within the federation area may participate in a federation.

(2) ~~The governing body of a public library may agree by contract to form a federation with the governing board of another public, school, special, college, or university library if one of the parties is or maintains a library that has been~~

~~designated by the state library commission as a headquarters library for that federation area. any library may agree to participate in the federation.~~ The participating entities may retain the autonomy over their respective libraries specified in the contract.

(3) The expense of providing library services for the library federation must be based on funds received from the state or participating libraries ~~as agreed upon in the contract. The funds of the federation must be maintained as a separate account as provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.~~

(4) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the ~~contract by the action of its governing body~~ *federation's bylaws.*

(5) A federation may contract with other federations, libraries, or the state library to provide federation services."

Section 4. Section 22-1-404, MCA, is amended to read:

"22-1-404. Board of trustees — coordinator. (1) In a library federation, there must be a board of trustees ~~with advisory powers only, the operation of the library federation having been specified by contract, with advisory powers only,~~ *appointed according to the federation's bylaws.* The state library commission, provided for in 22-1-101, shall adopt rules governing the composition of the federation board of trustees. A majority of the members of each federation board of trustees must be trustees of a public library, as defined in 22-1-326.

(2) ~~The library director or a designee of the headquarters library shall serve as the coordinator of the federation and federation membership shall appoint a coordinator of the federation who shall serve as a nonvoting member of the federation advisory board of trustees."~~

Section 5. Repealer. Section 22-1-403, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 74

[HB 187]

AN ACT REVISING AND EXTENDING THE OLD FORTS TRAIL; AMENDING SECTION 60-1-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-1-207, MCA, is amended to read:

"60-1-207. Old forts trail. ~~Beginning~~ *The old forts trail is established as follows:*

(1) *beginning at the Old Fort old fort park in Fort Benton, proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 387, along state highway 387 to U.S. highway 87 to Havre, and continuing along state highway 233 and into Canada on Saskatchewan 21, the Old Forts Trail is established; and*

(2) *beginning at the old fort park in Fort Benton and proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 223*

north, southwest on U.S. highway 87 to the junction with state highway 564, north on state highway 564 to the junction with state highway 365, west on state highway 365 to the junction with state highway 225, north on state highway 225 to the junction with state highway 366, west on state highway 366 to the junction with state highway 417, north on state highway 417 to the junction with U.S. highway 2, west on U.S. highway 2 to the junction with interstate highway 15, north on interstate highway 15, and into Canada on Alberta highway 4.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 75

[HB 198]

AN ACT DEFINING “STUDENT INTERN” IN THE CONTEXT OF STATE EMPLOYMENT, INCLUDING PAY, BENEFITS, AND OTHER EMPLOYEE RIGHTS AND RESPONSIBILITIES; AMENDING SECTIONS 2-18-101, 2-18-111, 2-18-601, 2-18-611, 2-18-701, 2-18-809, 2-18-1101, 2-18-1202, 2-18-1303, 39-29-101, AND 39-30-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

“2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) “Agency” means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) “Anniversary date”, except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) “Base salary” means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) “Board” means the board of personnel appeals established in 2-15-1705.

(5) “Class” means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) “Class series benchmark” means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

(10) "Department" means the department of administration created in 2-15-1001.

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(b) *The term does not include a student intern.*

(12) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(14) "Job sharing" means the sharing by two or more persons of a position.

(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(16) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

(24) "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(24)~~(25) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-111, MCA, is amended to read:

"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation — rules. (1) A state agency that operates within an Indian reservation shall give a preference in hiring for employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law; ~~or~~

(iv) engagement as an independent contractor or employment by an independent contractor; or

(v) *engagement as a student intern.*

(b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state."

Section 3. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts, *and student interns.*

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "*Student intern*" means a student intern as defined in 2-18-101.

~~(12)~~(13) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(13)~~(14) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)~~(15) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 4. Section 2-18-611, MCA, is amended to read:

“2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker *or a student intern*, as both terms are defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker *or as a student intern* does not apply toward the person’s rate of earning vacation leave credits.”

Section 5. Section 2-18-701, MCA, is amended to read:

“2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government;:

(1) “employee” means:

~~(1)~~(a) a permanent full-time employee, as provided in 2-18-601;

~~(2)~~(b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

~~(3)~~(c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(4)~~(d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(5)~~(e) elected officials;

~~(6)~~(f) officers and permanent employees of the legislative branch;

~~(7)~~(g) judges and permanent employees of the judicial branch;

~~(8)~~(h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

~~(9)~~(i) a temporary full-time employee, as provided in 2-18-601:

~~(a)~~(i) who is regularly scheduled to work more than 6 months a year;

~~(b)~~(ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(e)(iii) whose temporary status is defined through collective bargaining;

~~(10)~~(j) a temporary part-time employee, as provided in 2-18-601:

(a)(i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

~~(b)~~(ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(c)~~(iii) whose temporary status is defined through collective bargaining; and

~~(11)~~(k) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(2) "*employee*" does not include a student intern, as defined in 2-18-101."

Section 6. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee or a dependent of the employee.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state, including flexible spending account benefits. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(5) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system or a student intern, as defined in 2-18-101."

Section 7. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person

in charge of a public retirement board or a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) (a) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(b) *The term does not include a student intern, as defined in 2-18-101.*

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 8. Section 2-18-1202, MCA, is amended to read:

"2-18-1202. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) (a) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(b) *The term does not include a student intern, as defined in 2-18-101.*

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency."

Section 9. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Employee" means a person employed by an employer but does not include an independent contractor, ~~or~~ a person hired by the employer under a personal services contract, *or a student intern, as defined in 2-18-101.*

(5) "Employer" means a legally constituted department, board, or commission of the state, a county, an incorporated city or town, or any political subdivision of the state, including a school district or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

Section 10. Section 39-29-101, MCA, is amended to read:

"39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

(a) United States army, navy, air force, marine corps, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

(a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or

(b) who has received a purple heart medal.

(3) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

(i) a state or local elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; ~~or~~

(v) engagement as an independent contractor or employment by an independent contractor; *or*

(vi) a position occupied by a student intern, as defined in 2-18-101.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

Section 11. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; ~~or~~

(g) engagement as an independent contractor or employment by an independent contractor; *or*

(h) *a position occupied by a student intern, as defined in 2-18-101.*

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 76

[HB 207]

AN ACT REVISING FOR PURPOSES OF THE UNIFORM TOD SECURITY REGISTRATION LAWS THE DEFINITION OF "SECURITY ACCOUNT" TO INCLUDE CASH EQUIVALENTS AND INVESTMENT MANAGEMENT AND CUSTODY ACCOUNTS HELD IN TRUST; AMENDING SECTION 72-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-6-301, MCA, is amended to read:

"72-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, *cash equivalents*, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; ~~or~~

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; *or*

(c) *an investment management or custody account with a trust company or trust division of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 77

[HB 209]

AN ACT PROVIDING THAT FINANCIAL INSTITUTIONS THAT ARE SUBJECT TO AND IN COMPLIANCE WITH REGULATION E OF THE FEDERAL ELECTRONIC FUND TRANSFER ACT MUST BE CONSIDERED TO BE IN COMPLIANCE WITH THE PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AMENDING SECTION 32-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-6-102, MCA, is amended to read:

"32-6-102. Electronic funds transfer systems — applicability. (1) The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act, (15 U.S.C. 1693, et seq.,) addresses many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the United States Code or Title 32, chapter 1, parts 1 through 5, to the extent that those laws permit.

(2) *Financial institutions that are subject to and in compliance with Regulation E of the federal Electronic Fund Transfer Act must be considered to be in compliance with the provisions of this chapter.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 78

[HB 215]

AN ACT CHANGING THE REFERENCES TO THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL TO REFERENCES TO THE MONTANA COUNCIL ON DEVELOPMENTAL DISABILITIES; REORGANIZING ASSOCIATED STATUTES; AMENDING SECTIONS 2-15-1869, 2-15-1870, 53-20-202, 53-20-203, AND 53-20-205, MCA; REPEALING SECTION 53-20-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1869, MCA, is amended to read:

“2-15-1869. ~~Developmental~~ Montana council on developmental disabilities planning and advisory council. (1) The governor shall appoint a *Montana council on developmental disabilities planning and advisory council* in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, codified at 42 U.S.C. 15001, et seq.

(2) In addition to the members appointed under subsection (1), the council must include one member of the senate and one member of the house of representatives.

(3) (a) Except as provided in subsection (3)(b), members of the council serve 1-year terms.

(b) Of the members described in 42 U.S.C. 15025(b)(3) who represent persons with developmental disabilities and parents or relatives of persons with developmental disabilities, the governor shall appoint:

(i) not less than one-half of the members to serve for terms concurrent with the gubernatorial term and until their successors are appointed; and

(ii) the remaining members to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) Members appointed to the council may also be selected to represent the geographical regions and the racial and ethnic composition of the state, including American Indians.

(5) *A council member, unless the member is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed \$25, for each day in which the member is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.*

(6) *The council shall:*

(a) *advise the department of public health and human services, other state agencies, tribal governments, councils, local governments, and private organizations on programs for services to persons with developmental disabilities; and*

(b) *serve in any capacity required by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, or by other federal law for the administration of federal programs for services to persons with developmental disabilities.*

~~(5)(7)~~ (a) ~~Except~~ *Unless the state enters a contract with a nonprofit corporation as provided in 2-15-1870, the council:*

(i) *is allocated to the department of commerce for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply;*

(ii) *may elect from among its members the officers necessary for the proper management of the council;*

(iii) *may adopt rules governing its own organization and procedures, and a majority of the members of the council constitutes a quorum for the transaction of business; and*

(iv) *shall employ and fix the compensation and duties of necessary staff and control the location of its office.*

(b) *The department of commerce shall remain the designated state agency for funding purposes if the responsibilities of the council are delegated by contract to a nonprofit corporation as provided in 2-15-1870."*

Section 2. Section 2-15-1870, MCA, is amended to read:

"2-15-1870. State Montana council on developmental disabilities planning and advisory council — contract with nonprofit corporation. The state may contract with a nonprofit corporation for the purposes of carrying out the responsibilities delegated to the ~~statewide Montana council on developmental disabilities planning and advisory council~~ appointed pursuant to 2-15-1869 in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and this section. Approval of the contract delegating the responsibilities of the council to a nonprofit corporation must be in the form of a letter signed by the secretary of the federal department of health and human services or the secretary's designee."

Section 3. Section 53-20-202, MCA, is amended to read:

"53-20-202. Definitions. As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day-care services;
- (e) training services;
- (f) education services;
- (g) employment services;
- (h) recreation services;
- (i) personal-care services;
- (j) domiciliary-care services;

- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis.

~~(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-1869."~~

Section 4. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;

(2) initiate a preventive developmental disabilities program that must include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means must be used to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205.

(3) collect and disseminate information relating to developmental disabilities;

(4) ~~prepare, with the assistance of the planning and advisory council,~~ an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services must include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(7) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(8) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or children with physical disabilities if the assistance is not otherwise provided for by law.”

Section 5. Section 53-20-205, MCA, is amended to read:

“53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department must contain specific conditions for performance by the contractor. The department shall set minimum standards for programs and establish appropriate qualifications for persons employed in ~~such~~ the programs.

(3) All developmental disabilities facilities and services must comply with existing federal guidelines and with requirements that will enable the services and facilities to qualify for available aid funds. However, this section does not require facilities serving persons with developmental disabilities to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part must conform as nearly as possible to the plans of the ~~advisory~~ council created under 2-15-1869.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities.”

Section 6. Repealer. Section 53-20-206, MCA, is repealed.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 79

[HB 224]

AN ACT ALLOWING OPERATION OF A QUADRICYCLE WITHOUT A MOTORCYCLE ENDORSEMENT; AND AMENDING SECTIONS 61-5-102 AND 61-5-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-102, MCA, is amended to read:

“61-5-102. Drivers to be licensed. (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver’s license. A person may not receive a Montana driver’s license until the person surrenders to the department all valid driver’s licenses issued by any other jurisdiction. A person may not have in the

person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle ~~or quadricycle~~ unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". ~~A motorcycle endorsement is required for the operation of a quadricycle.~~

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

- (i) the specific vehicle type or types being operated; or
- (ii) the passengers or type or types of cargo being transported.

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

Section 2. Section 61-5-110, MCA, is amended to read:

"61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, ~~quadricycle~~, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3).

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Approved March 24, 2005

CHAPTER NO. 80

[HB 242]

AN ACT ALLOWING A TERMINALLY ILL RESIDENT OR NONRESIDENT YOUTH UNDER 17 YEARS OF AGE TO RECEIVE A FREE ONE-TIME MONTANA HUNTING LICENSE; PROVIDING TERMS AND CONDITIONS REGARDING LICENSURE; AMENDING SECTIONS 87-2-105 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) ~~A~~ *Except for a youth who qualifies for a license pursuant to 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:*

(a) a Montana hunter safety and education course established in subsection (4) or (6); or

(b) a hunter safety course in any other state or province.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to

active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 2. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) *The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.*

(b) *In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.*

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 81

[HB 255]

AN ACT AMENDING THE DEFINITION OF "MENTAL DISORDER"; SPECIFYING THAT A MENTAL DISORDER MAY CO-OCCUR WITH ADDICTION OR CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 53-21-102 AND 53-21-126, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in

dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) *A mental disorder may co-occur with addiction or chemical dependency.*

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or

omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

(6) *An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis of chemical dependency may satisfy criteria for commitment under this part."*

Approved March 24, 2005

CHAPTER NO. 82

[HB 273]

AN ACT EXEMPTING RURAL TRANSPORTATION PROVIDERS FROM PUBLIC SERVICE COMMISSION AUTHORITY; AMENDING SECTION 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

“69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; ~~or~~

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; *or*

(iii) *any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;*

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of ~~disabled or elderly~~ persons provided by private, nonprofit organizations, *including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310.* As used in this subsection,

(i) ~~“disabled” means an individual who has a physical or mental impairment that substantially limits one or more major life activities;~~

(ii) ~~“elderly” means a person 60 years of age or older; and~~

~~(iii)~~ “private, nonprofit organization” means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 83

[HB 285]

AN ACT ALLOWING A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, OR STALKING OR A PERSON ELIGIBLE TO PETITION FOR AN ORDER OF PROTECTION TO PARTICIPATE IN A PROGRAM THAT PROVIDES THE VICTIM OR ELIGIBLE PERSON WITH THE OPPORTUNITY TO REQUEST AND BE GRANTED A SUBSTITUTE ADDRESS THAT CAN BE USED FOR CERTAIN OFFICIAL PURPOSES; ESTABLISHING ELIGIBILITY FOR INDIVIDUALS TO PARTICIPATE IN THE PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE PROGRAM; ASSIGNING CERTAIN DUTIES TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR CESSATION OF PARTICIPATION IN THE PROGRAM; AND PROVIDING AUTHORITY TO THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy — program. (1) It is the policy of this state to ensure the safety and security of a victim of partner or family member assault, sexual assault, or stalking or a person eligible to petition for an order of protection under 40-15-102 by providing the victim or eligible person with certain, limited services.

(2) The assistance and services provided by the state to implement the policy stated in subsection (1) are limited to a program administered by the department that provides to a participant:

- (a) a substitute address that can be used by the participant for official purposes; and
- (b) a service that allows the department to:
 - (i) receive service of process and mail addressed to the participant; and
 - (ii) forward to the participant any process served on the participant and all mail received on the participant’s behalf.

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) “Applicant” means a victim and includes a parent or guardian who acts on behalf of a victim.

(2) "Department" means the department of justice.

(3) "Participant" means an applicant who has submitted an application pursuant to [section 3] that has been approved by the department.

(4) "Partner or family member assault" has the meaning provided in 45-5-206.

(5) "Sexual assault" means sexual assault as defined in 45-5-502, sexual intercourse without consent as defined in 45-5-503, incest as defined in 45-5-507, or sexual abuse of children as defined in 45-5-625.

(6) "Stalking" has the meaning provided in 45-5-220.

(7) "Victim" means an individual who has been a victim of partner or family member assault, sexual assault, or stalking or who is otherwise eligible to file a petition for an order of protection under 40-15-102.

Section 3. Substitute address for participant — application — duties of department — penalty. (1) A victim who is a resident of this state may apply to the department to have a substitute address designated by the department to serve as the official address of the applicant.

(2) An application for the issuance of a substitute address must include:

(a) proof that the victim is a resident of this state and specific evidence showing that, before the applicant files the application, the applicant has been a victim;

(b) the address that is requested to be kept confidential;

(c) a telephone number at which the department may contact the applicant;

(d) a question asking whether the applicant wishes to register to vote or, if registered, to change the applicant's address for voter registration;

(e) a designation of the department as agent for the applicant for the purposes of service of process and receipt of mail;

(f) the signature of the applicant;

(g) the date on which the applicant signed the application; and

(h) any other information required by the department.

(3) The department shall approve or disapprove an application within 5 business days after the application is filed.

(4) (a) The department:

(i) shall approve an application that is accompanied by specific evidence that the applicant has been a victim within 4 years prior to filing the application; and

(ii) may approve an application if the applicant does not provide specific evidence or the crime against the applicant was committed more than 4 years prior to the applicant filing the application.

(b) Specific evidence that would meet the requirements of this subsection (4) includes but is not limited to a copy of an applicable record of conviction, a temporary restraining order, a protective order granted by a court of competent jurisdiction, or a sworn statement of the victim.

(5) If a participant indicates in response to the question asked in subsection (2)(d) that the participant wishes to register to vote or to change the participant's address used for voter registration:

(a) the department shall furnish the participant with a form developed by the department to register the participant or change the participant's address for voter registration; and

(b) the participant shall complete and sign the form and return it to the department.

(6) A person who knowingly attests falsely or provides incorrect information in the application is guilty of false swearing under 45-7-202.

Section 4. Designation of substitute address — forwarding of mail — disclosure of confidential address. (1) Upon approving an application, the department shall:

(a) designate a substitute address for the participant;

(b) receive mail addressed to the participant;

(c) forward mail that the department receives on behalf of the participant to the participant.

(2) The department may not divulge in any manner the name of a participant or the confidential address or substitute address of a participant unless:

(a) the participant's name, confidential address, or substitute address is requested by a law enforcement agency, in which case the department shall provide the name, confidential address, or substitute address to the law enforcement agency; or

(b) a court of competent jurisdiction orders the department to make the name, confidential address, or substitute address available, in which case the department shall provide the name, confidential address, or substitute address to the person identified in the order.

Section 5. Cancellation of substitute address — cessation of duty. (1) Except as provided in subsections (2) and (3), the department shall cancel the substitute address of a participant 4 years after the date on which the department approved the participant's application.

(2) The department may not cancel the substitute address of a participant if, before the substitute address of the participant is canceled, the participant shows to the satisfaction of the department that the participant remains in imminent danger of becoming a victim.

(3) The department may cancel the substitute address of a participant at any time if:

(a) the participant changes the participant's confidential address from the confidential address listed in the application and fails to notify the department within 48 hours after the change of confidential address; or

(b) the department determines that the participant knowingly provided false or incorrect information in the application.

(4) When the department cancels the substitute address of a participant, the duty of the department to provide the services described in [section 1(2)] to the participant ceases.

Section 6. Rules. The department shall adopt rules to carry out the provisions of [sections 1 through 7], including rules establishing:

(1) a form on which a victim may apply to participate in the program described in [section 1(2)];

(2) a form on which an applicant may declare whether the applicant wishes to register to vote or, if registered, to change the applicant's address for voter registration. The form may be a separate form or may be included as an integral part of the application provided for in subsection (1).

(3) procedures necessary to implement the program.

Section 7. Implementation by state and local government agencies. The department shall issue the participant a substitute address card containing the participant's name, substitute address, and other information that the department determines appropriate. Any state or local government agency that needs or requires the participant's address shall accept and use the address on the card. The agency may make and file a photocopy of the card.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [sections 1 through 7].

Approved March 24, 2005

CHAPTER NO. 84

[HB 298]

AN ACT DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO USE AVAILABLE MONEY FROM THE FUTURE FISHERIES IMPROVEMENT PROGRAM, THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, THE RIVER RESTORATION PROGRAM, OR OTHER DEPARTMENT FUNDS AVAILABLE FOR VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES TO MATCH FUNDS FROM THE U.S. FISH AND WILDLIFE SERVICE STATE WILDLIFE GRANT PROGRAM OR OTHER AVAILABLE FEDERAL FUNDS IN ORDER TO ENTER INTO VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES FOR EMERGENCY INSTREAM FLOWS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Emergency instream flows — funding. (1) The legislature recognizes the propriety of establishing voluntary leases or other authorized water augmentation measures for instream flows so that mechanisms will be in place to maintain streamflows sufficient for fisheries and aquatic resources during emergency low-flow conditions.

(2) Funding for voluntary leases and other water augmentation measures authorized under subsection (1) may come from any uncommitted funds allocated to the state under the U.S. fish and wildlife service state wildlife grant program or other available federal funds, matched by the department with up to \$500,000 from the future fisheries improvement program provided for in 87-1-272, from the bull trout and cutthroat trout enhancement program provided for in 87-1-283, from the river restoration program provided for in 87-1-257, from a combination of funds from these programs, or from any other department funds available for voluntary leases or other water augmentation measures.

(3) All leasing or other authorized water augmentation measures for instream flow must comply with all requirements provided in Title 85, chapter 2, parts 3 and 4.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 85

[HB 308]

AN ACT INCLUDING MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "APPROPRIATE"; INCLUDING A USE OF WATER FOR INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "BENEFICIAL USE"; REMOVING THE SPECIFIC STATUTORY GUIDANCE RELATED TO THE UPPER CLARK FORK RIVER BASIN AND INCLUDING THOSE REQUIREMENTS IN EXISTING STATUTES; REMOVING THE LIMITATION ON THE NUMBER OF TIMES THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY RENEW A TEMPORARY CHANGE APPLICATION; PROVIDING THAT AN APPROPRIATOR MUST PROVIDE NOTICE TO THE DEPARTMENT TO RENEW A TEMPORARY CHANGE AND INCREASING THE PERIOD FOR SUBMISSION OF NEW EVIDENCE OF ADVERSE EFFECTS TO OTHER WATER RIGHTS; PROVIDING THAT A TEMPORARY CHANGE AUTHORIZATION APPLICANT MUST INCLUDE CERTAIN INFORMATION REGARDING STREAM REACH, LOCATION, AND A STREAMFLOW MEASURING PLAN; REMOVING THE REQUIREMENT THAT AN APPLICANT FOR A TEMPORARY CHANGE PROVIDE NOTICE 30 DAYS PRIOR TO SUBMISSION OF APPLICATION; PROVIDING THAT THE MAXIMUM QUANTITY OF WATER THAT MAY BE DIVERTED TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY RESOURCES MAY NOT EXCEED THE HISTORICALLY DIVERTED AMOUNT, EXCEPT THAT ONLY THE AMOUNT HISTORICALLY CONSUMED, OR A SMALLER AMOUNT IF SPECIFIED IN THE LEASE AUTHORIZATION, MAY BE USED TO MAINTAIN OR ENHANCE STREAMFLOWS BELOW THE LESSOR'S POINT OF DIVERSION; REPEALING THE TERMINATION DATE FOR TEMPORARY CHANGES TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY; REPEALING THE TERMINATION DATE ON LEASING FOR THE PURPOSE OF MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY; AMENDING SECTIONS 85-2-102, 85-2-338, 85-2-402, 85-2-404, 85-2-407, 85-2-408, 85-2-419, AND 85-2-436, MCA; REPEALING SECTIONS 85-2-409, 85-2-439, AND 85-2-440, MCA, SECTION 6, CHAPTER 322, LAWS OF 1995, SECTION 14, CHAPTER 487, LAWS OF 1995, SECTION 3, CHAPTER 433, LAWS OF 2001, AND SECTION 3, CHAPTER 122, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water *for a beneficial use*;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; or

~~(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439 to maintain or enhance streamflows to benefit the fishery resource in accordance with 85-2-408.~~

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

~~(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439 a use of water through a change in appropriation right or lease for instream flow to benefit the fishery resource in accordance with 85-2-408.~~

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.

The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or~~

~~(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~

~~(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(11) "Ground water" means any water that is beneath the ground surface.~~

~~(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body~~

of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) “Salvage” means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) “State water reservation” means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) “Substantial credible information” means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) “Water division” means a drainage basin as defined in 3-7-102.

(22) “Water judge” means a judge as provided for in Title 3, chapter 7.

(23) “Water master” means a master as provided for in Title 3, chapter 7.

(24) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water *for a beneficial use*; ~~or~~

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; *or*

(c) *to maintain or enhance streamflows to benefit the fishery resource in accordance with 85-2-408.*

(2) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; ~~or~~

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; *or*

(c) *a use of water through a change in appropriation right or lease for instream flow to benefit the fishery resource in accordance with 85-2-408.*

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-338, MCA, is amended to read:

"85-2-338. Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

~~(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;~~

~~(e)(b)~~ prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

~~(d)(c)~~ provide a forum for all interests to communicate about water issues;

~~(e)(d)~~ provide education about water law and water management issues;

~~(f)(e)~~ identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

~~(g)(f)~~ identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

~~(h)(g)~~ assist in facilitating the resolution of water-related disputes;

~~(i)(h)~~ provide coordination with other basin management and planning efforts;

~~(j)(i)~~ advise government agencies about water management and permitting activities;

~~(k)(j)~~ consult with local governments within the Upper Clark Fork River basin; and

~~(l)(k)~~ report periodically to the legislature.”

Section 3. Section 85-2-402, MCA, is amended to read:

“85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, or a temporary change *in appropriation right* authorization ~~for instream use to maintain or~~

enhance streamflows to benefit the fishery resource pursuant to 85-2-408, ~~or water use pursuant to 85-2-439 when authorization does not require appropriation works~~, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change *in appropriation right* authorization pursuant to 85-2-408 ~~or 85-2-439 for instream flow to benefit the fishery resource~~, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice

and may hold one or more hearings upon any other proposed change *in appropriation right* if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change *in appropriation right* subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change *in appropriation right* is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.

~~(Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)~~

85-2-402. (Effective July 1, 2005) Changes in appropriation rights.

(1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

~~(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:~~

~~(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 2.~~

~~(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.~~

~~(c) The proposed use of water is a beneficial use.~~

~~(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.~~

~~(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.~~

~~(f) The water quality of an appropriator will not be adversely affected.~~

~~(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.~~

~~(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.~~

~~(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:~~

~~(a) the criteria in subsection (2) are met; and~~

~~(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:~~

~~(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water~~

~~supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;~~

~~(ii) the benefits to the applicant and the state;~~

~~(iii) the effects on the quantity and quality of water for existing uses in the source of supply;~~

~~(iv) the availability and feasibility of using low quality water for the purpose for which application has been made;~~

~~(v) the effects on private property rights by any creation of or contribution to saline seep; and~~

~~(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.~~

~~(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:~~

~~(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and~~

~~(b) for the withdrawal and transportation of appropriated water for out of state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.~~

~~(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out of state use may occur:~~

~~(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:~~

~~(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;~~

~~(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and~~

~~(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.~~

~~(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:~~

~~(i) whether there are present or projected water shortages within the state of Montana;~~

~~(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;~~

~~(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and~~

~~(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.~~

~~(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.~~

~~(7) For any application for a change in appropriation right involving 4,000 or more acre feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.~~

~~(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).~~

~~(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.~~

~~(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.~~

~~(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.~~

~~(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.~~

~~(14) The department may adopt rules to implement the provisions of this section.~~

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre-feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)~~

85-2-402. (Effective July 1, 2009) Changes in appropriation rights.

(1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) ~~The~~ *Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408,* the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) ~~The~~ *Except for a temporary change in appropriation right authorization pursuant to 85-2-408,* the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for *federal non-Indian and Indian* reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change *in appropriation right* if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change *in appropriation right* subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change *in appropriation right* is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has

been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section."

Section 4. Section 85-2-404, MCA, is amended to read:

"85-2-404. (Temporary) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, ~~the use of water pursuant to 85-2-439~~, or a temporary change *in appropriation right* pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. ~~(Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)~~

~~85-2-404. (Effective July 1, 2005) Abandonment of appropriation right.~~ ~~(1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.~~

~~(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.~~

~~(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:~~

~~(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and~~

~~(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.~~

~~(4) The lease of an existing right pursuant to 85-2-436 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.~~

~~(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)~~

85-2-404. (Effective July 1, 2009) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of ~~his~~ *an* appropriation right with the intention of wholly or partially abandoning the right or if ~~he~~ *the* ~~appropriator~~ ceases using ~~his~~ *the* appropriation right according to its terms and

conditions with the intention of not complying with those terms and conditions, the appropriation right ~~shall is~~, to that extent, ~~be deemed~~ considered abandoned and ~~shall must~~ immediately expire.

(2) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right or ceases using ~~his~~ *the* appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for ~~his~~ use, there ~~shall be is~~ a prima facie presumption that the appropriator has abandoned ~~his~~ *the* right for the part not used.

(3) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change *in appropriation right* pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter."

Section 5. Section 85-2-407, MCA, is amended to read:

"85-2-407. ~~(Temporary)~~ Temporary changes in appropriation right.

(1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) ~~An~~ *An* authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. *There is no limitation on the number of renewals the appropriator may seek.* Renewal of an authorization for a temporary change in appropriation right requires ~~application~~ *notice* to the department by the appropriator. Upon ~~application~~ *receipt of the notice*, the department shall notify other appropriators potentially affected by the renewal and shall allow ~~30~~ *90* days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) during the initial temporary change application process;
- (ii) during the temporary change renewal process; and
- (iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change *in appropriation right* has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change *in appropriation right* is made available from the development of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408 or 85-2-439 may be approved for a period equal to the expected life of the project, not to exceed 30 years *not to exceed 30 years unless a renewal is obtained pursuant to subsection (3).* (Terminates June 30, 2005—see 3, Ch. 433, L. 2001; see 3, Ch. 122, L. 2003.)

~~85-2-407. (Effective July 1, 2005) Temporary changes in appropriation right.~~ (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

~~(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.~~

~~(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.~~

~~(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it~~

determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) ~~during the initial temporary change application process;~~
- (ii) ~~during the temporary change renewal process; and~~
- (iii) ~~once during the term of the temporary change permit.~~

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) ~~Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.~~

(7) ~~A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.~~

(8) ~~If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."~~

Section 6. Section 85-2-408, MCA, is amended to read:

"85-2-408. (Temporary) Temporary change authorization for instream flow — additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section. *The application must:*

(a) *include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and*

(b) *provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.*

(2) ~~(a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:~~

~~(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or~~

~~(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.~~

~~(b) For the purpose of this section, "person" means and is limited to an individual, association, partnership, or corporation.~~

~~(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:~~

(i) *change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or*

(ii) *lease a consumptive use water right to another person for instream flow to benefit the fishery resource.*

(b) *For the purpose of this subsection (2), "person" means and is limited to an individual, association, partnership, or corporation.*

~~(3)~~(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4)(4) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

~~(5) For the purpose of identifying and consulting with individuals or groups that may be affected by the proposed change authorization, the applicant shall, 30 days before submitting the application to the department, publish notice of the proposed change authorization in a local newspaper of general circulation in the county or counties affected.~~

~~(6)~~(5) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

~~(7)~~(6) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) *The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)*

Section 7. Section 85-2-419, MCA, is amended to read:

"85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water may retain the right to the salvaged water for beneficial use. Except for a short-term lease pursuant to 85-2-410, any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water must be in accordance with 85-2-408, 85-2-410, or 85-2-436, ~~or 85-2-439.~~"

Section 8. Section 85-2-436, MCA, is amended to read:

"85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the environmental quality council, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

- (i) the length of the stream reach and how it is determined;
- (ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;
- (iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;
- (iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and
- (v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) (a) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection (2). ~~Except as provided in 85-2-439, for~~ For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(b) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437.

(c) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(d) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(e) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(f) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term equal to the expected life of the project but to not more than 30 years. Upon

receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(j) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(g) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(j) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(h) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(i) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(j) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(k) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the department and commission and submitted to the environmental quality council, which shall complete the final report by December 1, 2008.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)”

Section 9. Repealer. (1) Sections 85-2-409, 85-2-439, and 85-2-440, MCA, are repealed.

(2) Section 6, Chapter 322, Laws of 1995, section 14, Chapter 487, Laws of 1995, section 3, Chapter 433, Laws of 2001, and section 3, Chapter 122, Laws of 2003, are repealed.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 86

[HB 312]

AN ACT DIRECTING THE EXPENDITURE OF THE PORTION OF SMITH RIVER USER FEES DEPOSITED IN THE SMITH RIVER CORRIDOR ENHANCEMENT ACCOUNT FOR SPECIFIC PURPOSES RELATED TO THE PRESERVATION AND ENHANCEMENT OF THE SMITH RIVER CORRIDOR; AMENDING SECTION 23-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-409, MCA, is amended to read:

“23-2-409. Allocation of user fees — expenditure of Smith River corridor enhancement account. (1) All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in ~~a~~ *an account in the state special revenue fund* to the credit of the department.

(2) *Money deposited in the Smith River corridor enhancement account must be expended to:*

(a) *protect and enhance the integrity of the natural and scenic beauty of the Smith River waterway and its recreational, fisheries, and wildlife values through the lease or acquisition of property, including lease or acquisition of partial interests in property by the department within the Smith River corridor;*

(b) *pursue projects that serve to protect, enhance, and restore fisheries habitat, streambank stabilization, erosion control, and recreational values within the Smith River corridor, including Smith River tributaries; and*

(c) *pursue projects that serve to maintain and enhance instream flows for recognized recreational and aquatic ecosystem values in the Smith River corridor.”*

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 87

[HB 313]

AN ACT INCREASING THE MAXIMUM PERIOD OF TIME THAT THE DEPARTMENT OF CORRECTIONS MAY CONTRACT WITH PRERELEASE CENTERS FROM 10 YEARS TO 20 YEARS; AND AMENDING SECTION 53-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-203, MCA, is amended to read:

“53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(d) ~~utilize~~ use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds ~~10~~ 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of ~~10~~ 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.”

Approved March 24, 2005

CHAPTER NO. 88

[HB 347]

AN ACT EXTENDING THE PERIOD OF TIME DURING WHICH REAL PROPERTY CAN BE CONVERTED OR DIVERTED FROM OPEN-SPACE LANDS; AMENDING SECTION 76-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-6-107, MCA, is amended to read:

“76-6-107. Conversion or diversion of open-space land. (1) ~~No open-space~~ Open-space land, the title to or interest or right in which has been acquired under this chapter, ~~shall~~ *may not* be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement, *in the terms of the acquisition agreement, or by the governing body resolution.*

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land ~~shall~~ *must* be substituted within a reasonable period not exceeding ~~1 year~~ *3 years* for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 89

[HB 350]

AN ACT INCREASING THE BID DEPOSIT FOR STATE LAND LEASES; AMENDING SECTION 77-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-203, MCA, is amended to read:

“77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier’s check, or money order in an amount equal to ~~20%~~ *100%* of the annual rental bid in the case of grazing land and an amount equal to ~~\$1~~ *\$20* per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor.

(3) If the successful bidder fails to execute the lease for any reason, ~~his the~~ deposit ~~shall be~~ *is* forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 90

[HB 354]

AN ACT CLARIFYING THAT A LANDLORD MAY STORE AN ABANDONED MOBILE HOME ON THE PREMISES OF THE MOBILE HOME PARK; REQUIRING THAT THE SALE OF AN ABANDONED MOBILE HOME BE CONDUCTED PURSUANT TO SECTION 30-9A-610, MCA, OR AT A SHERIFF’S SALE; PROVIDING THAT THE LANDLORD HAS A LIEN ON THE MOBILE HOME AND THE PROCEEDS FROM THE SALE OF THE MOBILE HOME FOR CERTAIN AMOUNTS OWED TO THE LANDLORD BY THE MOBILE HOME OWNER; AND AMENDING SECTION 70-24-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-432, MCA, is amended to read:

“70-24-432. Disposition of abandoned mobile home occupying a mobile home park space. (1) If a tenancy terminates and the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home park space and ~~a period of time of~~ at least 5 days ~~has~~ *have* elapsed since the occurrence of events upon which the landlord formed ~~that the~~ belief ~~that the mobile home has been abandoned~~, the landlord may remove the mobile home from the premises ~~or keep the mobile home stored on the premises~~.

(2) If the landlord ~~moves~~ *does not keep* the mobile home ~~from~~ stored on the premises, the landlord shall store the mobile home in a place of safekeeping and ~~in either case~~ shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner ~~a~~ reasonable removal and storage ~~charge~~ *charges*.

(3) ~~If~~ *Regardless of where* the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the ~~removal and~~ storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity ~~found by~~ the landlord ~~determines to~~ *have* ~~has~~ an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home under subsection (4).

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from ~~storage where it is stored~~ and does not do so within 20 days after delivery of the owner's response, the mobile home ~~is~~ *may be* conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is ~~so~~ *low enough* that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under ~~the provisions of 30-9A-610 or~~ the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord ~~may deduct from~~ *has a lien on* the mobile home and the proceeds of a sale ~~conducted pursuant to subsection (6) for~~ the reasonable costs of removal, storage, notice, and sale, ~~and any~~ or delinquent rent or damages owing on the premises. ~~and A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to~~

warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining sale proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county."

Approved March 24, 2005

CHAPTER NO. 91

[HB 397]

AN ACT CLARIFYING THE GOVERNANCE STRUCTURE AND CLASSIFICATION FOR HIGH SCHOOL DISTRICTS WITH HIGH SCHOOL BUILDINGS LOCATED IN MORE THAN ONE ELEMENTARY DISTRICT; AMENDING SECTIONS 20-3-351 AND 20-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-351, MCA, is amended to read:

"20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which *the operating* high school buildings are located, the trustees of the elementary district ~~designated by the high school boundary commission in which the operating high school building that was first constructed is located;~~ and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school."

Section 2. Section 20-6-301, MCA, is amended to read:

"20-6-301. High school district classification. The classification of a high school district ~~shall~~ *must* be the same as the classification of the elementary district (20-6-201) where the high school building is located. *If there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district described in 20-6-201 in which the operating high school building that was first constructed is located.* Whenever the classification of such elementary district is changed, the classification of a high school district ~~shall~~ *must* be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions ~~shall~~ *must* be filled by the appointment of the county superintendent, and ~~such~~ *those* positions ~~shall be~~ *are* subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances ~~shall~~ *may* not be filled until the number of trustee positions has been reduced to the number required by law."

Section 3. Coordination instruction. If Senate Bill No. 24 and [this act] are both passed and approved and if both amend section 20-3-351, then [section 26 of Senate Bill No. 24], amending section 20-3-351, is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 92

[HB 400]

AN ACT INCREASING AN INDIVIDUAL'S MINIMUM WEEKLY UNEMPLOYMENT BENEFIT AMOUNT FROM 15 PERCENT TO 19 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTION 39-51-2201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. The maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount must be ~~15%~~ 19% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount."

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 93

[HB 401]

AN ACT REVISING THE REQUIREMENTS FOR CRANE AND HOIST ENGINEERS' LICENSES; REQUIRING INSPECTIONS OF CRANES, HOISTS, AND OTHER EQUIPMENT; PROVIDING THAT A DEPARTMENT OF LABOR AND INDUSTRY CRANE INSPECTOR MAY REQUIRE THE SUSPENSION OF OPERATION OF CRANES, HOISTS, AND OTHER

EQUIPMENT UNTIL DEFECTIVE CONDITIONS ARE CURED; PROVIDING THAT OPERATING A CRANE, HOIST, OR OTHER EQUIPMENT BEFORE CURING A DEFECTIVE CONDITION IS A MISDEMEANOR; AND AMENDING SECTIONS 50-76-103, 50-76-109, 50-76-110, AND 50-76-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-76-103, MCA, is amended to read:

“50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any crane and hoist equipment, when used in hoisting or lowering personnel or material, that has a manufacturer’s *load chart* rating of 6 tons or more ~~and a boom length of more than 25 feet or to operate a tower crane of any capacity~~ without first obtaining a license from the department. ~~This~~ *The crane and hoist* equipment includes overhead trolley and gantry cranes used *only* in construction ~~only~~ and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) ~~First-class~~ *Licensed first-class* crane and hoist engineers ~~are licensed to~~ *may* operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class crane and hoist engineer’s license must be *at least* 18 years of age ~~or older~~ and, *except as provided in [section 2]:*

(A) ~~must have no~~ *may not have* less than ~~3 years’~~ *1 year of* experience operating equipment requiring a second-class crane and hoist engineer’s license or shall demonstrate equivalent competency by examination; and

(B) ~~is required to~~ *shall* pass a written test prescribed by the department.

(ii) A biennial physical exam is required of all *first-class* licensees.

(c) ~~Second-class~~ *Licensed second-class* crane and hoist engineers ~~are~~ *licensed to* *may* operate crane and hoist equipment with a manufacturer’s *load chart* rating of *between* 6 tons and a boom length of 25 feet ~~up to equipment with a rating of 15~~ 17.5 tons ~~and a boom length of 60 feet or a tower crane of any capacity.~~

(d) (i) An applicant for a second-class crane and hoist engineer’s license must be *at least* 18 years of age ~~or older~~ and, *and except as provided in [section 2]:*

(A) ~~must have no~~ *may not have* less than ~~2 years’~~ *1 year of* experience in actual operation of crane and hoist equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) ~~is required to successfully~~ *shall* pass a written examination prescribed by the department.

(ii) A biennial physical exam is required of all *second-class* licensees.

(e) ~~Third-class~~ *Licensed third-class* crane and hoist engineers ~~are licensed to~~ *may* move all truck cranes driven by any power and of any capacity. This license requirement *also* applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class crane and hoist engineer’s license is required to successfully pass a written test prescribed by the department and must be *at least* 18 years of age ~~or older~~ before receiving a license.

(3) The department shall reexamine each ~~licensed engineer or operator licensee~~ every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years.”

Section 2. Recognition of national certification. (1) The department shall issue a first-class or second-class crane and hoist engineer’s license to any individual who is certified by the national commission for the certification of crane operators as having qualifications that are at least substantially equivalent to the requirements of this state for licensing as a first-class or second-class crane and hoist engineer.

(2) An individual licensed under this section is subject to all requirements of this chapter pertaining to licensed first-class or second-class crane and hoist engineers, including license fees, biennial physical exams, and 5-year reexaminations.

Section 3. Failure of licensee to have possession of license or proof of license while operating equipment. (1) A person may not operate any equipment covered by licensure under this chapter unless the person has possession of the license or proof of licensure at the time the person is operating the equipment.

(2) The department shall issue a citation to any person violating the provisions of subsection (1). The department may direct an employee of the department to conduct onsite inspections to determine compliance with subsection (1) and to issue citations for violations of subsection (1).

(3) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, address, and mailing address of the person receiving the citation;

(c) information explaining the procedure for paying the fine or for providing the department with proof of licensure;

(d) a statement that the amount of the fine is \$100 and that the person receiving the citation has 30 days from the date of the citation to pay the fine or to submit proof of licensure to the department; and

(e) a statement that failure to pay the fine or to provide proof of licensure may result in revocation of the license of the person receiving the citation.

(4) The department shall waive the fine for any person who provides proof of licensure within the 30-day period provided in subsection (3)(d).

Section 4. Section 50-76-109, MCA, is amended to read:

“50-76-109. Violation of chapter a — misdemeanor. ~~Every~~ (1) A person who operates ~~any of the engines and machinery named a crane, hoist, or other equipment described in 50-76-102 or 50-76-103 for which a crane and hoist engineer’s license is required without first obtaining a license, as required by the sections referred to above and every owner, employer, or manager of any such the engines or machinery crane, hoist, or other equipment who permits any an unlicensed person to operate such the crane, hoist, or other equipment engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.~~

(2) *A person who knowingly operates or an owner, employer, or manager who knowingly allows the operation of a crane, hoist, or other equipment in violation of the rules adopted pursuant to 50-76-110(2) is guilty of a misdemeanor.”*

Section 5. Section 50-76-110, MCA, is amended to read:

“50-76-110. Crane inspector — qualifications — inspections. (1) The department shall employ at least one crane inspector. ~~The A crane inspector shall hold a first-class hoisting engineer’s license under this chapter for a minimum of 1 year and~~ must have a minimum of 3 ~~years’~~ years of experience operating cranes *and must have been licensed for at least 1 year as a first-class crane and hoist engineer.*

(2) *The department may adopt by rule applicable operating and safety standards established by the American national standards institute.*

(3) *A crane inspector may require that a crane, hoist, or other equipment subject to this chapter that is not being operated in compliance with an operating or safety standard adopted by rule pursuant to subsection (2) be declared to be out of service and that the crane, hoist, or other equipment not be operated until the noncompliance is cured.”*

Section 6. Section 50-76-112, MCA, is amended to read:

“50-76-112. Rulemaking authority. (1) The department may adopt rules consistent with the purposes of this chapter for the administration of the following classes of crane and hoist operators:

- ~~(1)(a)~~ crane and hoist oiler;
- ~~(2)(b)~~ crane and hoist hoisting;
- ~~(3)(c)~~ crane and hoist hydraulic;
- ~~(4)(d)~~ crane gantry and trolley;
- ~~(5)(e)~~ hoists;
- ~~(6)(f)~~ mine hoists;
- ~~(7)(g)~~ hydraulic and boom trucks; ~~and~~
- ~~(8)(h)~~ tower crane; *and*

(i) air tugger winches, other than air tugger winches on equipment used to drill oil, natural gas, or water wells.

(2) *In adopting rules pertaining to inspections and safety requirements, the department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the operation, testing, maintenance, and inspection of cranes, hoists, and other equipment subject to the provisions of this chapter.”*

Section 7. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 50, chapter 76, part 1, and the provisions of Title 50, chapter 76, part 1, apply to [sections 2 and 3].

Approved March 24, 2005

CHAPTER NO. 94

[HB 437]

AN ACT ALLOWING PAYMENT OF PUBLIC ASSISTANCE GRANTS BY ELECTRONIC TRANSFER; AND AMENDING SECTION 53-2-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-608, MCA, is amended to read:

“53-2-608. Method of issuing assistance grants. (1) ~~Checks in payment of public assistance must be issued by the department of public health and human services upon approved certificates of award and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from the state public assistance accounts. When an individual or household is determined to be eligible for public assistance under this title, the department shall make payments to the individual or household or to a vendor on behalf of the individual or household in the full amount approved. Payment may be made by check or by electronic transfer, which includes but is not limited to direct deposits to an account at a financial institution and electronic benefit transfer cards. All public assistance checks represent cash on demand at full par value to the recipient and vendor.~~

(2) ~~Whenever the department of public health and human services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such an inability to manage funds and that making payments to the recipient would be contrary to the recipient’s welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of the recipient to another person found by the department to be interested in or concerned with the welfare of the recipient.”~~

Approved March 24, 2005

CHAPTER NO. 95

[HB 439]

AN ACT DISALLOWING THE INDIVIDUAL INCOME TAX CREDIT FOR TAXES IMPOSED BY FOREIGN COUNTRIES IF A FEDERAL INCOME TAX CREDIT WAS TAKEN FOR THE FOREIGN TAXES; AMENDING SECTION 15-30-124, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-124, MCA, is amended to read:

“15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries. (1) Subject to the conditions provided in subsections (2) through ~~(5)~~ (6), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter;

(b) the resident’s pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder; and

(c) the resident’s distributive share, whether separately or nonseparately stated, of any income tax imposed by and paid to another state or country by a partnership of which the resident is a partner.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) *The credit is not allowed on taxes imposed by a foreign country to the extent that a credit for the taxes imposed by the foreign country was claimed for federal income tax purposes.*

~~(4)~~(5) The allowable credit must be computed by a formula prescribed by the department.

~~(5)~~(6) For the purposes of the credit under subsections (1)(b) and (1)(c):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation or partnership on income taxable under this chapter."

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Approved March 24, 2005

CHAPTER NO. 96

[HB 508]

AN ACT REVISING THE DEFINITION OF "EMPLOYER" FOR PURPOSES OF A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AND AMENDING SECTION 2-18-1303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) (a) "Employee" means a person employed by an employer ~~but~~.

(b) *The term* does not include an independent contractor or person hired by the employer under a personal services contract.

(5) "Employer" means a legally constituted department, board, ~~or~~ commission, *or any other administrative unit of the state government*, a county,

an incorporated city or town, or any *other* political subdivision of the state, including a school district, or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

Approved March 24, 2005

CHAPTER NO. 97

[HB 557]

AN ACT RESTRICTING THE AMOUNT OF INSURANCE THAT A LENDER MAY REQUIRE A BORROWER TO MAINTAIN ON A LOAN SECURED BY REAL PROPERTY; AND AMENDING SECTION 32-5-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance — real property security — definitions. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan.

(2) Insurance permitted under the provisions of this section ~~shall~~ must be obtained through an insurance company authorized to conduct business in Montana by a ~~duly~~ licensed ~~agent~~ insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It ~~shall be~~ is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) *A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.*

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower

when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; ~~provided, however, that~~ *However, that* a licensee may not require a borrower to purchase insurance from the licensee or from any particular ~~agent insurance producer~~, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be additional charges or a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of \$300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.

(8) *As used in this section:*

(a) *"borrower" means a mortgagor, grantor of a deed of trust, or other debtor;*

(b) *"improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and*

(c) *"lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt."*

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 98

[HB 564]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER OWNERSHIP OF THE MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS TO A QUALIFIED LOCAL GOVERNMENT ENTITY FOR LESS THAN FAIR MARKET VALUE; REQUIRING THE DEPARTMENT TO RETAIN THE RIGHT TO RECLAIM OWNERSHIP OF THE PROPERTY AT NO COST TO THE STATE IF THE PROPERTY CEASES TO BE USED AS AN AGRICULTURAL CENTER AND MUSEUM; AMENDING SECTION 23-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-109, MCA, is amended to read:

"23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains. There is a Montana agricultural

center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall ~~have jurisdiction, custody, and control of~~ *acquire* the center and museum, but *the department* may lease the facility to a qualified local government entity or nonprofit corporation or *transfer ownership of the facility to a qualified local government entity for less than fair market value* for so long as the local government entity or nonprofit corporation, *as applicable*, provides for development, operation, and maintenance of the center and museum without cost to the state of Montana. As *part of any transfer of ownership of the facility, the department of fish, wildlife, and parks retains the right to reclaim ownership of the property at no cost to the state if the property ceases to be used as an agricultural center and museum for more than 1 year.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 99

[HB 598]

AN ACT DELAYING THE EFFECTIVE DATE AND APPLICABILITY DATE OF THE LAW REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; AMENDING SECTIONS 9 AND 10, CHAPTER 441, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9, Chapter 441, Laws of 2003, is amended to read:

"Section 9. Effective date. [This act] is effective October 1, ~~2005~~ 2007."

Section 2. Section 10, Chapter 441, Laws of 2003, is amended to read:

"Section 10. Applicability. [This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] by the department of justice to the clerks of the district courts on and after the second Monday of May ~~2006~~ 2008."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 100

[HB 609]

AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR A PERSON TRYING TO ENFORCE A WATER RIGHT; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-125, MCA, is amended to read:

"85-2-125. (Temporary) Recovery of attorney fees by prevailing party. (1) ~~(a)~~ In the Upper Clark Fork River basin, as defined in 85-2-335, the

prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.

(b)(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable *costs and* attorney fees.

(2)(b) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

(3) *The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.* (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-125. (Effective July 1, 2005) Recovery of attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable *costs and* attorney fees.

(2) *The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.*

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 101

[HB 612]

AN ACT REVISING APPLICATION PROCEDURES FOR COMMERCIAL TIMBER REMOVAL; REQUIRING LIABILITY INSURANCE AND PERFORMANCE BONDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REVIEW COMPLETED APPLICATIONS WITHIN 30 DAYS; AND AMENDING SECTION 77-5-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-212, MCA, is amended to read:

"77-5-212. Commercial permits for timber removal sale. (1) Permits may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, *and under such* restrictions and rules ~~as~~ *as* that the board may approve for *the sale of* timber:

(a) in quantities of less than 100,000 ~~feet~~ board ~~measure~~ *feet*; and

(b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 ~~feet~~ board ~~measure~~ *feet*.

(2) *To apply for a permit under this section, an individual shall:*

(a) *complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;*

(b) *using ribbon, mark the area of the proposed sale; and*

(c) *designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.*

(3) *For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed \$1,000.*

(4) *For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.*

(5) *Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.*

(6) *The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.*

(2)(7) *Repeated permits of this kind shall may not be issued to avoid advertising and the consequent competition secured thereby by advertising.*

(8) *Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.*

(9) *Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.*

(10) *Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area."*

Approved March 24, 2005

CHAPTER NO. 102

[SB 6]

AN ACT REVISING THE MONTANA SAFE HAVEN NEWBORN PROTECTION ACT; CLARIFYING THE AVAILABILITY OF INFORMATION CONCERNING COUNSELING; AMENDING SECTION 40-6-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-405, MCA, is amended to read:

“40-6-405. Surrender of newborn to emergency services provider — temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation; and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the ~~safe delivery line established under 40-6-415~~ department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with ~~the pamphlet produced under 40-6-415 and inform the parent~~ information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and

to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.”

Section 2. Coordination instruction. If both Senate Bill No. 24 and [this act] are passed and approved and if both bills amend 40-6-405, then the amendments to 40-6-405 in Senate Bill No. 24 are void.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 103

[SB 8]

AN ACT SIMPLIFYING AND CLARIFYING TERMINOLOGY AND PROCEDURES IN THE WORKERS' COMPENSATION ACT; SPECIFYING THAT STATUTORY AND COMMON-LAW RULES OF EVIDENCE ARE NOT APPLICABLE AT DEPARTMENT OF LABOR AND INDUSTRY HEARINGS UNDER THE WORKERS' COMPENSATION ACT; CLARIFYING WITH WHOM AND BY WHOM REPORTS OF ACCIDENTS, INJURIES, AND OCCUPATIONAL DISEASE ARE TO BE FILED; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR REPORTING REQUIREMENTS FOR INJURY OR OCCUPATIONAL DISEASE; CLARIFYING WHICH INSURER PAYS BENEFITS WHEN THERE IS A DISPUTE BETWEEN MULTIPLE INSURERS; CLARIFYING HOW LUMP-SUM PAYMENTS ARE ADDRESSED; REPEALING STATUTES ON PAYROLL COMPUTATION AND WAGE DEFINITIONS COVERED BY OTHER STATUTES; REMOVING THE REQUIREMENT FOR ASSESSMENTS ON CERTAIN PUBLIC CORPORATIONS THAT FAIL TO FILE PAYROLL REPORTS; AMENDING SECTIONS 39-71-105, 39-71-107, 39-71-201, 39-71-204, 39-71-307, 39-71-407, 39-71-608, 39-71-703, 39-71-741, 39-71-743, AND 39-71-1006, MCA; REPEALING SECTIONS 39-71-302, 39-71-303, 39-71-308, AND 39-71-318, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, ~~wage supplement~~ *wage-loss* and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, ~~as is the case with repetitive injury claims~~, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 2. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters.

(1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act and the Occupational Disease Act of Montana must be adjusted by a person in Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and adjust Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the person adjusting the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the adjuster's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

~~(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:~~

~~(a) written consent of the claimant; or~~

~~(b) approval of the department.~~

~~(7)(6)~~ The department may adopt rules to implement this section.

~~(8)(7)~~ For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full. The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 3. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, ~~39-71-308~~, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment

rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an

administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected

that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before ~~April 30, 2001, and on each succeeding~~ April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration ~~money fund~~ must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 4. Section 39-71-204, MCA, is amended to read:

"39-71-204. ~~Rescission~~ Hearings — rules of evidence — appeal, rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) *The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. A petition for a hearing before the department must be filed within 2 years after benefits are denied.*

(2) *A hearing under this chapter may be conducted by telephone or by videoconference.*

~~(1)~~(3) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause ~~appearing therefor~~.

~~(2)~~(4) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

~~(3)~~(5) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge."

Section 5. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer ~~and every insurer~~ insured by a plan No. 2 or a plan

No. 3 insurer is required to file with the ~~department~~ *employer's insurer*, under ~~rules adopted by the department~~ *rules*, a full and complete report of every accident, *injury, or occupational disease* to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. ~~The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.~~

(2) Every insurer transacting business under this chapter shall, ~~at the time and in the manner prescribed under rules adopted by the department~~, make and file with the department the reports of ~~accidents as the department requires every injury or occupational disease.~~

(3) An employer; or insurer; or adjuster who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An *employer or insurer* may contest a penalty assessment in a hearing conducted according to department rules."

Section 6. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

~~(5)~~(6) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

~~(6)~~(7) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(7)~~(8) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 7. Section 39-71-608, MCA, is amended to read:

"39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice — limitations on payments over ninety days. (1) An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without ~~such~~ the payments being construed as an admission of liability or a waiver of any right of defense.

(2) *An insurer may not make payments pursuant to this section for more than 90 days without:*

- (a) *written consent of the claimant; or*
- (b) *approval of the department."*

Section 8. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

- (a) has an actual wage loss as a result of the injury; and
- (b) has a permanent impairment rating that:
 - (i) is not based exclusively on complaints of pain;
 - (ii) is established by objective medical findings; and
 - (iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) ~~Beginning July 1, 2003, the~~ The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) *An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(3).*

~~(7)~~(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

~~(8)~~(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

~~(9)~~(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) “medium labor activity” means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) “light labor activity” means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) “sedentary labor activity” means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.”

Section 9. Section 39-71-741, MCA, is amended to read:

“39-71-741. Compromise settlements and lump-sum payments.

(1) By written agreement ~~filed with the department~~, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement *that settles a claim for any type of benefit* is subject to department approval. *Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (1)(c), are not subject to department approval.* If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant’s compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any permanent partial lump-sum conversion in part that is awarded to a claimant prior to the claimant’s final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; ~~or~~

(d) except as otherwise provided in this chapter, all other compromise settlements and lump-sum payments agreed to by a claimant and insurer; or

(e) *medical benefits on an accepted claim if an insurer disputes the insurer’s continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability.*

(2) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (3)(b).

(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 10. Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that ~~is approved for payment on the basis of~~ *necessary to pay current child support and a past-due child support obligation.*

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 11. Section 39-71-1006, MCA, is amended to read:

"39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

(a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or

(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A disabled worker is entitled to receive biweekly ~~compensation~~ *rehabilitation* benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. ~~Benefits~~ *Rehabilitation benefits payable pursuant to a retraining rehabilitation plan* under this section are not ~~subject to the lump-sum provisions of 39-71-741 payable in a lump sum. Rehabilitation benefits may be paid in a lump sum for job placement services.~~

(3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

(4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(5) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

(6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 12. Repealer. Sections 39-71-302, 39-71-303, 39-71-308, and 39-71-318, MCA, are repealed.

Section 13. Effective date — applicability. [This act] is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 104

[SB 9]

AN ACT EXTENDING THE TERM OF DRIVER'S LICENSES RENEWED BY MAIL; ALLOWING A SPOUSE OR DEPENDENT OF PERSONS STATIONED OUTSIDE MONTANA ON ACTIVE MILITARY DUTY TO RENEW A DRIVER'S LICENSE BY MAIL FOR A SECOND CONSECUTIVE TERM; AND AMENDING SECTION 61-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was

previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. *A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.*

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) ~~The~~ *Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 4 8 years, and a person may not renew by mail for consecutive license terms.*

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

- (a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;
- (b) motorcycle endorsement — 50 cents a year or fraction of a year;
- (c) commercial driver's license:
 - (i) interstate — \$5 a year or fraction of a year;
 - (ii) intrastate — \$3.50 a year or fraction of a year;
- (d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Approved March 24, 2005

CHAPTER NO. 105

[SB 17]

AN ACT REVISING THE MEETING TIMES OF THE BOARD OF EXAMINERS; AMENDING SECTION 2-15-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1007, MCA, is amended to read:

"2-15-1007. Board of examiners — allocation. (1) The governor, secretary of state, and attorney general constitute a board of examiners.

(2) The meetings of the board are held at the seat of government ~~on the third Monday in each month and such other~~ at times as set by the president ~~may call it together.~~

(3) The governor is the president, and the secretary of state is the secretary of ~~said the~~ board, and in the absence of either, an officer pro tempore may be elected from their number.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 106

[SB 23]

AN ACT EXPANDING THE TYPE OF PROPOSED MAJOR INFORMATION TECHNOLOGY PROJECTS TO BE INCLUDED IN A STATEWIDE INFORMATION TECHNOLOGY PROJECT BUDGET SUMMARY; REVISING THE REQUIRED CONTENT OF THE SUMMARY; AND AMENDING SECTIONS 2-17-526 AND 17-7-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-526, MCA, is amended to read:

“2-17-526. Information technology project budget summary. (1) (a)

The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of:

(i) ~~proposed major new~~ *new* information technology projects ~~contained in the state budget~~ *contained in the state budget*; and

(ii) *proposed major information technology projects impacting another state agency or branch of government to be funded within the current operating budgets, including replacement of or upgrade to existing systems.*

(b) The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major ~~new~~ information technology project.

(2) The information technology project summary must include:

(a) a listing by institution, agency, or branch of all *proposed major new* information technology ~~budget requests included in the state budget projects described in subsection (1).~~ Each ~~information technology budget request~~ *proposed project* included on the list must include:

(i) a description of what would be accomplished by ~~funding~~ *completing* the ~~request project~~;

(ii) *a list of the existing information technology applications for all branches of government that may be impacted by the project;*

(iii) *an estimate, prepared in consultation with the impacted agencies, of the costs and resource impacts on existing information technology applications;*

~~(ii)(iv) the proposed amount~~ *estimated cost of the request project;*

~~(iii)(v) the funding source for the request~~ *funding the project, including funds within an existing operating budget or a new budget request; and*

~~(iv)(vi) the proposed estimated cost of operating new~~ *information technology systems.*

(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:

(i) a description of the services provided; and

(ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.

(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.

(2) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4).”

Section 2. Section 17-7-111, MCA, is amended to read:

“17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and

recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

- (i) a prioritized list of services that would be eliminated or reduced;
 - (ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and
 - (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- (g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and
- (h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide *project budget* summary of recommendations for information technology projects and new initiatives. ~~Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified as provided in 2-17-526.~~

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.”

Approved March 24, 2005

CHAPTER NO. 107

[SB 26]

AN ACT ELIMINATING THE REQUIREMENT THAT THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ANALYZE THE AMOUNT OF STATE AND LOCAL TAX REVENUE FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS; REPEALING SECTION 69-3-1409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 69-3-1409, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 108

[SB 36]

AN ACT DIRECTING THE CODE COMMISSIONER TO RECODIFY THE MONTANA CODE ANNOTATED ON A TITLE-BY-TITLE BASIS; AND AMENDING SECTION 1-11-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-204, MCA, is amended to read:

“1-11-204. Duties of code commissioner. (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner’s recommendations for legislation that will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) the statutory history of each code section;

(b) annotations of state and federal court decisions relating to the subject matter of the code;

(c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;

(d) the Declaration of Independence;

(e) the Constitution of the United States of America and amendments to the constitution;

(f) acts of congress relating to the authentication of laws and records;

(g) the Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments to the constitution;

(j) ordinances relating to federal relations and elections;

(k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and

(l) a complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(3) (a) After publication of the Montana Code Annotated, the code commissioner shall:

~~(a)~~(i) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

~~(b)~~(ii) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

~~(c)~~(iii) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.

(b) *In carrying out the duty imposed by subsection (3)(a)(ii), the commissioner shall recodify the Montana Code Annotated on a title-by-title basis. The recodification is intended to be secondary to the completion of other interim duties.*

(4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Approved March 24, 2005

CHAPTER NO. 109

[SB 37]

AN ACT REQUIRING A BANK, TRUST COMPANY, OR BROKERAGE FIRM ACTING AS CUSTODIAN OF AN INSURER'S SECURITIES TO AGREE TO INDEMNIFY THE INSURER FOR THE LOSS OF ANY OF THE INSURER'S SECURITIES RESULTING FROM THE INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CUSTODIAN WHILE THE INSURER'S SECURITIES ARE IN ITS CUSTODY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Indemnification agreement. An insurer may contract with any national or state bank, trust company, or securities brokerage firm to act as custodian for the insurer's securities. The contract must contain an indemnification agreement stating that the custodian is obligated to indemnify the insurer for any loss of the insurer's securities in its custody resulting from the intentional or negligent act or omission of the custodian or the employee, officer, or agent of the custodian.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 12, part 1, and the provisions of Title 33, chapter 12, part 1, apply to [section 1].

Approved March 24, 2005

CHAPTER NO. 110

[SB 50]

AN ACT REVISING ALTERNATIVE ENERGY SYSTEMS LOAN LAWS; INCREASING THE LOAN ELIGIBILITY AMOUNT FOR ALTERNATIVE ENERGY SYSTEMS FOR SMALL BUSINESSES, INDIVIDUALS, UNITS OF LOCAL GOVERNMENT, UNITS OF THE UNIVERSITY SYSTEM, AND NONPROFIT ENTITIES; ALLOWING NONPROFIT ENTITIES, UNITS OF LOCAL GOVERNMENT, AND UNITS OF THE UNIVERSITY SYSTEM TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; ALLOWING ENERGY CONSERVATION PROJECTS TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH ADDITIONAL RULEMAKING AUTHORITY REGARDING ELIGIBILITY CRITERIA; CLARIFYING ADMINISTRATIVE COSTS FOR LOANS; AMENDING SECTIONS 75-25-101 AND 75-25-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-25-101, MCA, is amended to read:

"75-25-101. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any

interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals, ~~and small businesses, units of local government, units of the university system, and nonprofit organizations~~ for the purpose of building alternative energy systems, as defined in 15-32-102, ~~for residences and small businesses:~~

(a) to generate energy for their own use; ~~and~~

(b) for net metering as defined in 69-8-103; *and*

(c) *for capital investments by those entities for energy conservation purposes, as defined in 15-32-102, when done in conjunction with an alternative energy system.*

(4) The amount of a loan may not exceed ~~\$10,000~~ \$40,000, and the loan must be repaid within ~~5~~ 10 years.”

Section 2. Section 75-25-102, MCA, is amended to read:

“75-25-102. Administration of revolving loan account — rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

(a) eligibility criteria, including criteria for defining residences, ~~and small businesses, and nonprofit organizations, criteria for defining capital investments for energy conservation purposes,~~ ownership of the alternative energy facility, financial capacity to repay the loans, estimated return on investment in the alternative energy *and energy conservation*, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy and net metering uses;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.

(3) Administrative costs *charged to the account* may not exceed 10% of the total loans *or \$23,000 a year, whichever is greater*. Legal fees and costs associated with collection of debt on principal are not considered administrative ~~fees costs~~.

(4) The loan repayment period may not exceed ~~5~~ 10 years. The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% ~~per~~ a year. The department may seek recovery of the amount of principal loaned in the event of default.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 111

[SB 53]

AN ACT REMOVING THE REQUIREMENT THAT STATE AGENCIES MUST PAY THE RELOCATION EXPENSES OF EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, A CLOSURE, OR A REDUCTION IN FORCE; AMENDING SECTION 2-18-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1204, MCA, is amended to read:

“2-18-1204. Salary and benefits protection — employee transfer. (4)

An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(a)(1) the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held;

(b)(2) retain all accrued sick leave credits;

(c)(3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d)(4) relocation expenses as provided in state agency policy.

~~(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, including those funds subject to transfer under the provisions of section 6, Chapter 524, Laws of 1995.”~~

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 112

[SB 54]

AN ACT CLARIFYING THE REIMBURSEMENT RATE FOR PRIVATE MOTOR VEHICLE USE BY STATE OFFICERS AND EMPLOYEES; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-503, MCA, is amended to read:

“2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee, including a legislator on legislative business, is authorized to travel by motor vehicle, and chooses to use a privately

owned motor vehicle even though a government-owned or ~~leased government-owned~~ motor vehicle is available, the officer or employee may be reimbursed only at the rate of ~~52% of~~ 48.15% of the low mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or ~~leased government-owned~~ motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or ~~leased government-owned~~ motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, while traveling between their residences and Helena, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 113

[SB 56]

AN ACT REDUCING BY TWO THE NUMBER OF MEMBERS OF THE DESIGN-BUILD CONTRACTING BOARD; CLARIFYING BOARD MEMBERSHIP; AND AMENDING SECTION 60-2-136, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-136, MCA, is amended to read:

"60-2-136. Design-build contracting board — duties. (1) The director shall appoint a design-build contracting board. The duties of the board include but are not limited to:

(a) establishing the criteria by which eligible projects are selected for a design-build contract;

(b) assisting the department in making recommendations to the commission regarding the terms, conditions, and processes by which a design-build contract is advertised, proposals are evaluated and selected, and contracts are entered into and executed; and

(c) providing a review of the costs and benefits of design-build contracting that will be included in a report to the 2009 legislature.

(2) The design-build contracting board consists of the following members:

(a) ~~two representatives~~ *a representative of an association of the highway construction industry in Montana;*

(b) ~~two representatives~~ *a representative of an association of the highway design and engineering industry doing business in Montana;*

(c) a representative of the Montana office of the federal highway administration;

(d) two representatives of the department;

(e) a representative of the bonding and surety industry authorized to operate in Montana; and

(f) the director, who serves as presiding officer of the board.”

Approved March 24, 2005

CHAPTER NO. 114

[SB 67]

AN ACT INCREASING THE FEES FOR ISSUANCE OF A MARRIAGE LICENSE AND FILING OF A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION; PROVIDING THAT THE INCREASE IN FEES IS FOR THE COUNTY DISTRICT COURT FUND OR COUNTY GENERAL FUND FOR DISTRICT COURT OPERATIONS; AMENDING SECTIONS 3-2-714, 15-1-121, 25-1-201, 40-1-202, 40-1-311, AND 50-15-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-714, MCA, is amended to read:

“3-2-714. Civil legal assistance for indigent victims of domestic violence account. (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201(3)(a) and ~~(6)~~ (5). The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds.”

Section 2. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat taxes and fees pursuant to:
 - (i) Title 23, chapter 2, part 5;
 - (ii) Title 23, chapter 2, part 6;
 - (iii) Title 23, chapter 2, part 8;
 - (iv) 61-3-317;
 - (v) 61-3-321;
 - (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
 - (vii) Title 61, chapter 3, part 7;
 - (viii) 5% of the fees collected under 61-10-122;
 - (ix) 61-10-130;
 - (x) 61-10-148; and
 - (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
 - (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
 - (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
 - (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
 - (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
 - (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
 - (i) late filing fees pursuant to 61-3-220;
 - (j) title and registration fees pursuant to 61-3-203;
 - (k) veterans’ cemetery license plate fees pursuant to 61-3-459;
 - (l) county personalized license plate fees pursuant to 61-3-406;

- (m) special mobile equipment fees pursuant to 61-3-431;
- (n) single movement permit fees pursuant to 61-4-310;
- (o) state aeronautics fees pursuant to 67-3-101; and
- (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ *The* base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ *By* October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

~~(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).~~

~~(ii)~~ *(i)* The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(ii)(A)~~ *(3)(a)(i)(A)*.

~~(iii)~~ *(ii)* The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(iii)(A)~~ *(3)(a)(ii)(A)*.

(b) ~~(i) For fiscal year 2004 and subsequent fiscal years, the~~ *The* entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ *(3)(a)(i)(B)* and ~~(3)(a)(iii)(B)~~ *(3)(a)(ii)(B)*:

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A) and ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A):

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620

Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

~~(ii) for fiscal years 2004 and 2005:~~

Missoula County	Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

~~(iii) \$0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

~~(9)~~(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)~~(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 3. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$40;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$40;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(e).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)~~(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund *to be used* for district court operations.

(7) *Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.*

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 4. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of ~~\$30~~ \$40, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

- (2) satisfactory proof that the marriage is not prohibited; and
- (3) a certificate of the results of any medical examination required by the laws of this state.”

Section 5. Section 40-1-311, MCA, is amended to read:

“40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ *must* be firmly attached to the declaration and ~~shall~~ *must* be filed by the clerk of the district court in the county where the contract was executed.

- (2) A declaration of marriage must contain substantially the following:
 - (a) the names, ages, and residences of the parties;
 - (b) the fact of marriage;
 - (c) the name of father and maiden name of mother of both parties and address of each;
 - (d) a statement that both parties are legally competent to enter into the marriage contract.
- (3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.
- (4) The fee for filing a declaration is ~~\$30~~ *\$40* and ~~shall~~ *must* be paid to the clerk at time of filing.”

Section 6. Section 50-15-301, MCA, is amended to read:

“50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed during the preceding calendar month to the department. Reports must be on forms and contain information prescribed by the department. ~~The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license. Beginning July 1, 2003, the recording fee must be forwarded to the state for deposit in the state general fund.”~~

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 115

[SB 69]

AN ACT ESTABLISHING THE HONORARY POSITION OF STATE POET LAUREATE; PROVIDING FOR THE NOMINATION, APPOINTMENT, AND TERM OF THE STATE POET LAUREATE; PROVIDING FOR IMPLEMENTATION; AMENDING SECTION 22-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State poet laureate. (1) There is a state poet laureate.

(2) Within 30 days prior to the expiration of the state poet laureate’s term of appointment or within 30 days after a vacancy in the position occurs, the

Montana arts council established in 22-2-101 shall nominate three individuals to be the state poet laureate. The Montana arts council shall provide the list of nominees to the governor who shall:

(a) within 30 days after receiving the list of nominees, appoint the state poet laureate from among the individuals named on the list; and

(b) notify the secretary of state and the Montana arts council of the appointment.

(3) The individual named by the governor as the state poet laureate shall serve for a term of 2 years beginning on the date of appointment by the governor.

(4) The state poet laureate is an honorary position, and the person serving as the state poet laureate may not receive any compensation from the state for serving as the state poet laureate.

Section 2. Section 22-2-106, MCA, is amended to read:

"22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation ~~therein~~ *in the arts*;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) *as required under [section 1], nominate three individuals to serve as the state poet laureate and provide the list of nominees to the governor."*

Section 3. Implementation. The Montana arts council shall provide to the governor before July 1, 2005, a list of three nominees for the position of state poet laureate provided for in [section 1]. The governor shall appoint a state poet laureate within 30 days following receipt of the list of appointees. Subsequent nominations and appointments as state poet laureate must be made as provided in [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 116

[SB 79]

AN ACT EXEMPTING ELIGIBLE VETERANS FROM CEMETERY AND VEHICLE REGISTRATION FEES FOR TWO SETS OF SPECIAL VETERAN

LICENSE PLATES USED ON TWO VEHICLES; AMENDING SECTION 61-3-460, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-460, MCA, is amended to read:

“61-3-460. Vehicle registration fee and veterans’ cemetery fee waivers. (1) Except as otherwise provided in this section, a person eligible under subsection (2) is exempt from the veterans’ cemetery fee provided in 61-3-459 for ~~one set~~ **two sets** of special veteran license plates and all vehicle registration fees imposed by this chapter for ~~one vehicle~~ **two vehicles** that ~~is~~ **are** not used for commercial purposes.

(2) The following persons are eligible for the waiver provided in subsection (1):

(a) a veteran who was a prisoner of war who presents official documentation from the U.S. department of defense verifying the veteran’s status, or the veteran’s surviving spouse, if the spouse has not remarried;

(b) a veteran who is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs, or the veteran’s surviving spouse, if the spouse has not remarried;

(c) a veteran determined by the U.S. department of veterans affairs to be 50% or more disabled because of a service-connected injury and who has been awarded the purple heart, as verified by official documentation from the U.S. department of veterans affairs and the veteran’s military service record issued by the U.S. department of defense, or the veteran’s surviving spouse, if the spouse has not remarried, except that the veteran or the surviving spouse shall pay the veterans’ cemetery fee as provided for in 61-3-459;

(d) the surviving spouse, if the spouse has not remarried, of a military service member killed while on active duty as verified in official documentation issued by the U.S. department of defense; and

(e) the surviving spouse, if the spouse has not remarried, of a military service member or veteran who died of a service-connected injury or disability as determined by and verified in official documentation from the U.S. department of veterans affairs.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Approved March 24, 2005

CHAPTER NO. 117

[SB 83]

AN ACT CLARIFYING THAT ALTERNATIVE RENEWABLE ENERGY PROJECTS ARE ELIGIBLE FOR RENEWABLE RESOURCE GRANTS AND LOANS; AMENDING SECTION 85-1-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-602, MCA, is amended to read:

“85-1-602. Objectives. (1) The department shall administer a renewable resource grant and loan program to enhance Montana’s renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

- (a) feasibility, design, research, and resource assessment studies;
- (b) preparation of construction, rehabilitation, or production plans; and
- (c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

- (a) development of natural resource-based recreation;
- (b) development of offstream and tributary storage;
- (c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113, and development of state, tribal, and federal water projects;
- (d) water-related projects that improve water quality, including livestock containment facility projects; ~~and~~
- (e) advancement of farming practices that reduce agricultural chemical use; *and*

(f) projects that facilitate the use of alternative renewable energy sources, as defined in 15-6-225.

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 118

[SB 94]

AN ACT REVISING PROCEDURES FOR SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT ACTIONS; AND AMENDING SECTIONS 41-3-422, 41-3-428, AND 41-3-429, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-422, MCA, is amended to read:

“41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;

- (iv) long-term custody, as provided in 41-3-445;
 - (v) termination of the parent-child legal relationship, as provided in 41-3-607;
 - (vi) appointment of a guardian pursuant to 41-3-444;
 - (vii) a determination that preservation or reunification services need not be provided; or
 - (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.
- (b) The petition may be modified for different relief at any time within the discretion of the court.
- (c) A petition for temporary legal custody may be the initial petition filed in a case.
- (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.
- (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:
- (a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and
 - (b) a separate notice to the court stating any statutory time deadline for a hearing.
- (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.
- (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.
- (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:
- (i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;
 - (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
 - (iii) a preponderance of the evidence for an order of long-term custody; or
 - (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.
- (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.
- (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having

legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions ~~must~~ *must be served upon the person or the person's attorney of record* by certified mail, *by personal service, or by publication as provided in 41-3-428 and 41-3-429.* If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 2. Section 41-3-428, MCA, is amended to read:

"41-3-428. Service of process — service by publication — effect. (1) Except as *otherwise* provided in ~~subsection (2) this chapter~~, service of process ~~under this chapter~~ must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally *or by certified mail*, the person may be served by publication as provided in 41-3-429. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by

publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.”

Section 3. Section 41-3-429, MCA, is amended to read:

“41-3-429. Service by publication — summons — form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person; ~~whether inside or outside this state if in the state of Montana;~~ or

(b) ~~if no last-known address exists, if the last-known address is outside Montana, or if the identity or location of the person is unknown,~~ in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

- (i) the name of the court and the cause number;
- (ii) the initials of the child who is the subject of the proceedings;
- (iii) the name of the child’s parents, if known;
- (iv) the time within which an interested person shall appear;
- (v) the department’s address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent

proceeding, in judgment by default being entered for the relief requested in the petition.”

Approved March 24, 2005

CHAPTER NO. 119

[SB 99]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY NOT ISSUE OR RENEW THE LICENSE OF AN APPLICANT FOR LICENSURE IF THE CRIMINAL HISTORY OF THE EMPLOYEES OF THE APPLICANT DEMONSTRATES ANY CONVICTIONS INVOLVING FRAUD OR FINANCIAL DISHONESTY OR IF THE DEPARTMENT'S FINDINGS SHOW ADVERSE CIVIL JUDGMENTS INVOLVING FRAUDULENT OR DISHONEST FINANCIAL DEALINGS; REDUCING THE PERIOD FOR THE RETENTION OF CERTAIN RECORDS BY A LICENSEE FROM 4 YEARS TO 2 YEARS; AND AMENDING SECTIONS 31-1-705 AND 31-1-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-705, MCA, is amended to read:

“31-1-705. License — business locations — rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of \$375.

(3) (a) The department may not issue or renew a license unless findings are made that:

(~~a~~)(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(~~b~~)(ii) the applicant has unencumbered assets of at least \$25,000 for each location;

(~~c~~)(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(~~d~~)(iv) other information that the department considers necessary has been provided.

(b) *The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.*

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$187.50.

(5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 2. Section 31-1-714, MCA, is amended to read:

"31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year;

(g) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(h) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

Approved March 24, 2005

CHAPTER NO. 120

[SB 100]

AN ACT REVISING THE MONTANA TITLE LOAN ACT TO PROHIBIT THE DEPARTMENT OF ADMINISTRATION FROM ISSUING OR RENEWING THE LICENSE OF AN APPLICANT IF THE CRIMINAL HISTORY OF THE EMPLOYEES OF AN APPLICANT FOR LICENSURE DEMONSTRATE ANY CONVICTIONS INVOLVING FRAUD OR FINANCIAL DISHONESTY OR IF THE DEPARTMENT'S FINDINGS SHOW ADVERSE CIVIL JUDGMENTS INVOLVING FRAUDULENT OR DISHONEST FINANCIAL DEALINGS; AND AMENDING SECTION 31-1-805, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-805, MCA, is amended to read:

"31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

(ii) the date of formation if a business entity;

(iii) the physical address of each title loan office to be operated;

(iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(v) any other pertinent information that the department may require.

(3) *The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.*

~~(3)~~(4) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for each title loan office that the applicant intends to operate or operates in this state.

~~(4)~~(5) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

~~(5)~~(6) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

~~(6)~~(7) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.

~~(7)~~(8) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified."

Approved March 24, 2005

CHAPTER NO. 121

[SB 106]

AN ACT GENERALLY REVISING AND SIMPLIFYING THE STATEWIDE COST ALLOCATION PLAN FOR STATE CENTRALIZED SERVICES REQUIRED TO MANAGE NONGENERAL FUNDS; AMENDING SECTIONS 17-3-110 AND 17-3-111, MCA; REPEALING SECTION 17-1-510, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this chapter, the following definitions apply:

(1) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other administrative units of state government.

(2) "Indirect costs" means costs for services that benefit more than one agency or program and that are not readily assignable to the agency or program specifically benefiting.

Section 2. Section 17-3-110, MCA, is amended to read:

"17-3-110. Statewide cost allocation plan. (1) The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in

accordance with principles and procedures established by ~~federal~~ applicable regulations and guidelines.

(2) *An agency required to pay costs under the statewide cost allocation plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.*

Section 3. Section 17-3-111, MCA, is amended to read:

~~“17-3-111. Indirect cost rates — allocation~~ *Agency recovery of indirect costs.* (1) ~~Grantee agencies~~ *An agency receiving nongeneral funds* shall, in accordance with ~~federal all applicable~~ regulations, and guidelines, and ~~with private or grant rules governing those funds, as appropriate,~~ negotiate indirect cost reimbursement amounts and methodologies ~~and so that the agency may recover indirect costs of federal assistance programs and private assistance programs.~~

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intraagency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) *Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency.* The department shall provide technical assistance to an agency on how to build ~~an indirect costs into a grant cost proposal.~~

(5) ~~Indirect~~ *Except as provided for a unit of the university system under 20-25-427, indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, by an agency to pay the agency's indirect costs under 17-3-110 must be deposited in the general fund as provided in 17-3-110.* All other indirect costs, ~~except those costs recovered by a unit of the university system,~~ must be deposited in the fund from which the indirect costs were originally paid.”

Section 4. Repealer. Section 17-1-510, MCA, is repealed.

Section 5. Directions to code commissioner. Sections 17-3-110 and 17-3-111 are intended to be renumbered and codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to 17-3-110 and 17-3-111.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to [section 1].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 122

[SB 132]

AN ACT REPEALING A REQUIREMENT FOR THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE STATE COMPENSATION INSURANCE FUND ON INDEPENDENT CONTRACTOR OR OTHER EMPLOYMENT EXEMPTIONS; REPEALING SECTION 39-51-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 39-51-604, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 123

[SB 141]

AN ACT ALLOWING A NOTARIAL SEAL TO USE THE WORDS "NOTARY PUBLIC" INSTEAD OF THE WORDS "NOTARIAL SEAL"; AND AMENDING SECTION 1-5-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Approved March 24, 2005

CHAPTER NO. 124

[SB 169]

AN ACT INCREASING PENALTIES FOR VIOLATION OF NATURAL GAS PIPELINE SAFETY PROVISIONS AND REGULATIONS; AND AMENDING SECTION 69-3-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-207, MCA, is amended to read:

"69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) A person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, that applies to areas the commission has authority to enforce is subject to a fine of not less than \$100 or more than ~~\$25,000~~ *\$100,000*. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed ~~\$500,000~~ *\$1 million* for any related series of violations.

(2) In determining the amount of the penalty, the following must be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and other matters as justice may require.

(3) The fine must be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.”

Approved March 24, 2005

CHAPTER NO. 125

[SB 454]

AN ACT REVISING THE DEFINITION OF “INTEREST” WITH RESPECT TO CREDIT TRANSACTIONS; REVISING RESTRICTIONS ON CONSUMER LOANS; CLARIFYING WHAT CONSTITUTES AN ADD-ON BASIS LOAN; AMENDING SECTIONS 31-1-104, 32-5-103, AND 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-104, MCA, is amended to read:

“31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money *and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.*”

Section 2. Section 32-5-103, MCA, is amended to read:

“32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) ~~Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter loan made or collected in violation of subsection (1) by a person other than a licensee or a lender exempt under subsection (5) is void. The licensee and the person does not have the~~ ~~has no~~ right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1,

part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter.”

Section 3. Section 32-5-301, MCA, is amended to read:

“32-5-301. Charges, refunds, penalties, filing fees. (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be the greater of 5% of the amount past due or \$15, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

- (i) fees or premiums for title examination, title insurance, or similar purposes, including survey;
- (ii) fees for preparation of a deed, settlement statement, or other documents;
- (iii) fees for notarizing deeds and other documents;
- (iv) appraisal fees;
- (v) fees for credit reports; and
- (vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee ~~may not collect or receive any charges~~ *shall forfeit to the borrower a sum that is double the amount that is in excess of the charges authorized by this chapter.*

(7) Subsections (2), ~~and (3), and (6) of this section~~ apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. *The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.*

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

- (a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;
- (b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or
- (c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

- (a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;
- (b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or
- (c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.

Approved March 24, 2005

CHAPTER NO. 126

[HB 203]

AN ACT GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; REQUIRING ONE MEMBER OF THE BOARD OF NURSING TO BE AN ADVANCED PRACTICE REGISTERED NURSE AND REQUIRING ONE MEMBER TO BE FROM A RURAL HEALTH CARE FACILITY; EXPANDING MEMBERSHIP FOR THE BOARD OF SANITARIANS, THE BOARD OF PUBLIC ACCOUNTANTS, AND THE BOARD OF ATHLETICS; REVISING LICENSURE REFERENCES TO FEDERALLY EMPLOYED PHYSICIANS; REVISING REFERENCES TO SUPERVISION FOR REGISTERED NURSE-MIDWIVES; REMOVING THE EXEMPTION FROM LICENSURE FOR PHYSICAL THERAPISTS; MAKING LICENSURE REFERENCES UNIFORM; MAKING THE LICENSED PRACTICAL NURSING APPLICATION FEE NONREFUNDABLE; DEPOSITING FINES FOR CERTAIN VIOLATIONS IN THE GENERAL FUND RATHER THAN THE STATE SPECIAL REVENUE FUND; REVISING REFERENCES TO TOPICAL MEDICATION PACKAGING AND LABELING REQUIREMENTS; EXEMPTING THE OPERATOR OF CERTAIN INDUSTRIAL X-RAY EQUIPMENT FROM LICENSING; REVISING REFERENCES TO LICENSE EXEMPTIONS UNDER TITLE 37, CHAPTER 17, INCLUDING DELETION OF THE DEFINITION OF "SOCIAL PSYCHOLOGIST"; REVISING THE LICENSING EXEMPTION FOR OUT-OF-STATE VETERINARIANS PRACTICING IN MONTANA; DELETING THE REFERENCE TO BURIAL-TRANSIT PERMITS; CLARIFYING LICENSURE REQUIREMENTS FOR LICENSED ADDICTION COUNSELORS; REVISING INSURANCE AND QUALIFICATION REQUIREMENTS UNDER TITLE 37, CHAPTER 60; SPECIFYING THE COMPANY OR ORGANIZATION REQUIRED TO APPOINT A QUALIFYING AGENT AND RESIDENT MANAGER; REMOVING THE REQUIREMENT TO NOTIFY LAW ENFORCEMENT AND THE COUNTY ATTORNEY OF APPLICATIONS FOR A PRIVATE INVESTIGATOR LICENSE; AMENDING SECTIONS 2-15-1731, 2-15-1734, 2-15-1751, 2-15-1756, 2-15-1772, 37-3-103, 37-3-201, 37-3-205, 37-3-301, 37-3-303, 37-3-304, 37-3-306, 37-3-307, 37-3-309, 37-3-315, 37-3-323, 37-3-343, 37-3-344, 37-3-345, 37-3-346, 37-3-347, 37-3-348, 37-3-349, 37-4-103, 37-4-327, 37-4-408, 37-7-401, 37-8-101, 37-8-418, 37-10-202, 37-10-301, 37-10-302, 37-10-304, 37-10-306, 37-10-313, 37-11-106, 37-14-301, 37-17-104, 37-18-104, 37-19-101, 37-35-202, 37-60-202, 37-60-302, 37-60-303, AND 37-60-304, MCA; REPEALING SECTION 37-3-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1731, MCA, is amended to read:

"2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

- (a) five members having the degree of doctor of medicine;
- (b) one member having the degree of doctor of osteopathy;
- (c) one member who is a licensed podiatrist;
- (d) one member who is a licensed nutritionist;
- (e) one member who is a licensed physician assistant-certified; and
- (f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. ~~Each member must be a citizen of the United States. Each member must be a citizen of the United States.~~ Each member, except for public members, must have been licensed and must have practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, ~~upon notice and hearing,~~ be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 2-15-1734, MCA, is amended to read:

"2-15-1734. Board of nursing. (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) four registered professional nurses; *of whom at least one such member shall must have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing, at least one must be an advanced practice registered nurse, at least one must be engaged in nursing practice in a rural health care facility,* and at least one ~~such member~~ must be currently engaged in the administration, supervision, or provision of direct client care. Each member ~~shall who is a registered professional nurse must:~~

- (i) be a graduate of an approved school of nursing;
- (ii) be a licensed registered professional nurse in this state;
- (iii) have had at least 5 years' experience in nursing following graduation; and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) three practical nurses. Each ~~shall must:~~

- (i) be a graduate of a school of practical nursing;
- (ii) be a licensed practical nurse in this state;
- (iii) have had at least 5 years' experience as a practical nurse; and
- (iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members ~~shall~~ *must* have been residents of this state for at least 1 year before appointment ~~and be citizens of the United States and must be citizens of the United States.~~

(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 2-15-1751, MCA, is amended to read:

"2-15-1751. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board ~~shall consist~~ *consists* of ~~three~~ *five* members appointed by the governor with the consent of the senate. Each member must be a resident of this state, and ~~two~~ *three* of the members must be registered sanitarians. ~~One member~~ *Two members* must be from the public ~~and but not a sanitarian who sanitarians and~~ shall represent the interests of the public at large. Each sanitarian member ~~shall~~ *must* have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve ~~for staggered~~ 3-year terms. ~~One term shall that~~ expire on July 1 of ~~each~~ *a given* year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1756, MCA, is amended to read:

"2-15-1756. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of ~~five~~ *seven* members appointed by the governor. The members are:

(a) ~~three~~ *four* certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before ~~their appointment~~ *being appointed*. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before ~~his appointment~~ *being appointed*. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in *subsection (2)(a)*.

(c) ~~one member~~ *two members* of the general public who ~~is~~ *are* not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and ~~shall~~ *must* be submitted for consideration at the next regular session following appointment.

(4) The members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may, ~~after a hearing~~, remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 2-15-1772, MCA, is amended to read:

"2-15-1772. Board of athletics. (1) There is a board of athletics.

(2) The board consists of ~~three~~ *five* members appointed by the governor with the consent of the senate.

(3) Members shall serve staggered 3-year terms, and a member may not serve more than four consecutive terms.

(4) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121."

Section 6. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(h) ~~the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers~~ *practice of medicine by a physician licensed in another state and employed by the federal government*;

(i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered

nurse-midwives ~~under the supervision of a licensed physician~~ *under the conditions and limitations defined by law;*

(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(k) the rendering of services by a ~~physical therapist~~, *physical therapist*, technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(l) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 7. Section 37-3-201, MCA, is amended to read:

"37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the ~~further~~ words "Official Seal", ~~and acts. The board shall authenticate acts, rules, orders, certificates, and licenses shall be authenticated by applying the seal.~~

Section 8. Section 37-3-205, MCA, is amended to read:

"37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for ~~certificates~~ *licenses* and a register of licenses. The register is prima facie evidence of the matters contained in it."

Section 9. Section 37-3-301, MCA, is amended to read:

"37-3-301. License required — kinds of ~~certificates~~ licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four ~~forms of certificates of licensure~~ *kinds of licenses* under the board's seal: ~~the a physician's certificate license, the restricted certificate a specialized license, the a temporary certificate license, and the a telemedicine certificate license~~ issued in accordance with 37-3-341 through 37-3-349. The physician's ~~certificate license~~ and the ~~restricted certificate specialized license~~ must be signed by the president, but the temporary ~~certificate license~~ may be signed by any board member. The board shall decide which ~~certificate kind of license~~ to issue. ~~These certificates must be designated as:~~

~~(a) physician's certificate, which is subject to renewable registration in accordance with department rules;~~

~~(b) restricted certificate;~~

~~(c) temporary certificate, which is subject to specifications and limitations imposed by the board; and~~

~~(d) telemedicine certificate."~~

Section 10. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's ~~certificate~~ license. A physician's ~~certificate~~ license authorizes the holder to perform one or more of the acts embraced in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience."

Section 11. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary ~~certificate~~ license. (1) A temporary ~~certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate;~~ license authorizes the holder to perform one or more of the acts listed in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience, subject to all specifications, conditions, and limitations imposed by the board.

(2) A temporary ~~certificate~~ license may not be issued for a period that exceeds 1 year. However, except as provided in subsection (3), a temporary ~~certificate~~ license may be renewed, at the board's discretion, for additional 1-year periods but may not be renewed more than five times.

(3) A person meeting the requirements of 37-3-305(5) may be granted a limited temporary ~~certificate~~ license for a period of 3 months, which may be extended at the board's discretion upon a showing of good cause for a period not to exceed 3 months."

Section 12. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's ~~certificate~~ license — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's ~~certificate, certificate license, license~~ by reciprocity, or ~~certificate~~ license by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ that has been approved by the medical council of

Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) ~~No~~ *An* applicant who applies for a license on the basis of an examination and fails the examination may *not* be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) ~~Holders~~ *A holder* of the degree of doctor of osteopathy granted in 1955 or before ~~will be certified only on the basis of~~ *may not be licensed without* taking and passing the examination given by the department, subject to 37-1-101. ~~Holders~~ *A holder* of the degree of doctor of osteopathy granted after 1955 ~~will must be certified~~ *licensed* in the same manner as provided above for physicians.”

Section 13. Section 37-3-307, MCA, is amended to read:

“37-3-307. Qualifications for licensure — temporary certificate license. (1) The board may authorize the department to issue to an applicant a temporary ~~certificate~~ *license* to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or ~~its~~ *the* equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary ~~certificate~~ *license* may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary ~~certificate~~ *license* subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary ~~certificate~~ *license* to a person who has committed unprofessional conduct. The issuance of a temporary ~~certificate~~ *license* does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary ~~certificate~~ *license*. The board may, in the case of an applicant for a temporary ~~certificate~~ *license*, require a written, oral, or practical examination of the applicant."

Section 14. Section 37-3-309, MCA, is amended to read:

"37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department's inquiry.

(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a ~~certificate~~ *license* until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or ~~its~~ *the* equivalent and has otherwise met the requirements for the issuance of a license under this chapter."

Section 15. Section 37-3-315, MCA, is amended to read:

"37-3-315. Qualifications for licensure — ~~restricted certificate~~ *specialized license* — suspension — practice authorized. (1) A person may not be granted a ~~restricted~~ *specialized* license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school or college of osteopathic medicine;

(c) is licensed and engaged in the active practice of medicine or osteopathic medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the ~~restricted~~ *specialized* license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties;

(iii) board certification in a specialty recognized or certified by the American osteopathic association; or

(iv) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the comprehensive osteopathic medical licensing examination, the special purpose examination, the comprehensive osteopathic medical variable-purpose examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The ~~restricted~~ *specialized* license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a ~~restricted~~ *specialized* license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the ~~restricted certificate~~ *specialized license*."

Section 16. Section 37-3-323, MCA, is amended to read:

“37-3-323. Revocation or suspension of license. (1) The department may ~~make an investigation~~ *investigate* whenever it is brought to its attention ~~that there is the department learns of a~~ reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person’s intellect or judgment to the extent that ~~it~~ *the condition* incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated ~~its~~ *the* terms of probation.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person’s license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person’s professional competence has been proved to the satisfaction of the board.”

Section 17. Section 37-3-343, MCA, is amended to read:

“37-3-343. Practice of telemedicine prohibited without certificate license — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine ~~certificate license~~ issued pursuant to 37-3-301 and 37-3-341 through 37-3-349.

(2) A telemedicine ~~certificate license~~ authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician’s application for a telemedicine ~~certificate license~~ pursuant to 37-3-345(2).

(3) A telemedicine ~~certificate license~~ authorizes an out-of-state physician to practice only telemedicine. A telemedicine ~~certificate license~~ does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine ~~certificate license~~ issued pursuant to 37-3-301 and 37-3-341 through 37-3-349, in violation of the terms or conditions of that ~~certificate~~

license, in violation of the scope of practice allowed by the ~~certificate~~ *license*, or without a physician's ~~certificate of licensure~~ *license* issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 18. Section 37-3-344, MCA, is amended to read:

"37-3-344. Application for telemedicine ~~certificate~~ *license*. (1) A person desiring a telemedicine ~~certificate~~ *license* shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a ~~certificate~~ *license* fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board."

Section 19. Section 37-3-345, MCA, is amended to read:

"37-3-345. Qualifications for telemedicine ~~certificate~~ *license* — basis for denial. The board may not grant a telemedicine ~~certificate~~ *license* to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate or license to practice medicine or osteopathic medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine ~~certificate~~ *license*;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician ~~certified~~ *licensed* to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana.”

Section 20. Section 37-3-346, MCA, is amended to read:

“37-3-346. ~~Certificate~~ License renewal — fee. (1) A physician ~~certified~~ *licensed* to practice telemedicine shall renew the telemedicine ~~certificate~~ *license* every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

(4) This section may not be interpreted to conflict with 37-1-138.”

Section 21. Section 37-3-347, MCA, is amended to read:

“37-3-347. Reasons for denial of ~~certificate~~ license — alternative route to licensed practice. (1) The board may deny an application for a telemedicine ~~certificate~~ *license* if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a ~~certificate~~ *license* required by 37-3-341 through 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter; or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine ~~certificate~~ *license* provided in 37-3-345 may apply for a physician’s license in order to practice medicine in Montana.”

Section 22. Section 37-3-348, MCA, is amended to read:

“37-3-348. Discipline of physician with telemedicine ~~certificate~~ license. A physician granted a telemedicine ~~certificate~~ *license* may be subject to investigation and discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in 37-1-316 or in a board rule; or

(2) failed to:

(a) maintain the qualifications provided in 37-3-345 or in a board rule;

(b) maintain complete, legible patient records in written or readily retrievable electronic form;

(c) make complete, legible patient records available to the board during an investigation or disciplinary proceeding concerning the physician’s practice of telemedicine; or

(d) appear and testify at a deposition within the state in the course of an investigation or disciplinary proceeding conducted under Montana law that concerns the physician’s practice of telemedicine.”

Section 23. Section 37-3-349, MCA, is amended to read:

“37-3-349. Consent to jurisdiction. A physician granted a telemedicine ~~certificate~~ *license* shall, pursuant to 37-3-344, consent to the jurisdiction of:

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician’s practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician’s practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel’s jurisdiction, as provided in Title 27, chapter 6.”

Section 24. Section 37-4-103, MCA, is amended to read:

“37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician ~~or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans’ bureau employed by the United States government~~ or to a ~~legal~~ *legally licensed health care* practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member’s teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturistry under the conditions and limitations defined by Title 37, chapter 29. ~~None of the regulations contained in~~ *The provisions of this chapter do not* apply to a person engaged in the lawful practice of denturistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a *dentist licensed in Montana* or a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered."

Section 25. Section 37-4-327, MCA, is amended to read:

"37-4-327. Practicing dentistry without ~~certificate~~ license — penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a ~~certificate~~ license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be

deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 26. Section 37-4-408, MCA, is amended to read:

"37-4-408. Auxiliary personnel — employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist ~~in the dentist's office~~, except that ~~nothing in this section may not~~ be construed to allow the board by rule to ~~provide for delegation by permit~~ a licensed dentist to ~~delegate to~~ any auxiliary personnel ~~prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis~~. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of a licensed dentist."

Section 27. Section 37-7-401, MCA, is amended to read:

"37-7-401. Restrictions on prescriptions. (1) ~~It is unlawful for any~~ An authorized prescriber ~~to may not~~ sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that ~~it~~ *the prescription* can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled ~~by a specified amount~~ may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 1 year from the date ~~it~~ *the prescription* was originally ~~filled~~ *written*. A Schedule II prescription may not be refilled."

Section 28. Section 37-8-101, MCA, is amended to read:

"37-8-101. Purpose. ~~In order to~~ To safeguard life and health, a person practicing or offering to practice:

(1) professional nursing in this state ~~for compensation or personal gain is required to~~ *shall* submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(2) practical nursing in this state ~~for compensation or personal gain is required to~~ *shall* submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(3) as a medication aide in this state ~~is required to~~ *shall* submit evidence that the person is qualified to practice and is licensed as provided in this chapter."

Section 29. Section 37-8-418, MCA, is amended to read:

"37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a *nonrefundable* fee prescribed by the board to the department at the time the application is

submitted, ~~which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.~~

Section 30. Section 37-10-202, MCA, is amended to read:

“37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for ~~certificates of registration~~ *licensure* as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.”

Section 31. Section 37-10-301, MCA, is amended to read:

“37-10-301. ~~Certificate~~ License required for practice — unlawful acts — injunction. (1) ~~It is unlawful for a~~ *A person to may not:*

(a) practice optometry in this state unless that person has first obtained a ~~certificate of registration~~ *license*;

(b) sell, barter, or offer to sell or barter a ~~certificate of registration~~ *license* issued by the department;

(c) purchase or procure by barter a ~~certificate of registration~~ *license* with intent to use it ~~the~~ *license* as evidence of the holder’s qualification to practice optometry;

(d) materially alter with fraudulent intent a ~~certificate of registration~~ *license*;

(e) use or attempt to use a ~~certificate of registration~~ *license* that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid ~~certificate of registration~~ *license*;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for a ~~certificate of registration~~ *license*;

(h) advertise by displaying a sign or by otherwise claiming to be an optometrist without having at the time a valid ~~certificate of registration~~ *license*;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid ~~certificate of registration~~ *license* as an optometrist; ~~however~~ *However*, this subsection (1)(i) does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid ~~certificate of registration~~ *license*. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the

prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid ~~certificate of registration~~ *license* as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, ~~the board~~ may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.”

Section 32. Section 37-10-302, MCA, is amended to read:

“37-10-302. Examination — qualifications — application — issuance of ~~certificate~~ license. (1) The board shall adopt rules relative to and governing the qualifications of applicants for ~~certificates of registration~~ *license* as optometrists. If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant’s fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a ~~certificate~~ *license* to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) A person is not eligible to receive a ~~certificate of registration~~ *license* unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a ~~certificate of registration~~ *license* unless that person has ~~certificates of graduation~~ *graduated* from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study ~~covering 8 semesters or 4 years of actual attendance and~~ that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a ~~certificate of registration~~ *license* shall file an application, in the manner prescribed by the board, and pay a fee prescribed by the board.

(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a ~~certificate of registration~~ *license* signed by the members of the board.”

Section 33. Section 37-10-304, MCA, is amended to read:

“37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to ~~commence the practice of~~ optometry shall satisfactorily complete a course ~~prescribed by the board of medical examiners with consultation and~~

~~approval by the board of optometrists~~ with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.

(2) (a) Each person desiring to ~~commence the practice of~~ optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination.”

Section 34. Section 37-10-306, MCA, is amended to read:

“37-10-306. Certificate License to be displayed in office. Every person to whom a ~~certificate of examination or registration license~~ is granted shall display the ~~same license~~ in a conspicuous part of ~~his the person's office wherein~~ in which the practice of optometry is conducted.”

Section 35. Section 37-10-313, MCA, is amended to read:

“37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, ~~shall~~ must be deposited in the state ~~special revenue~~ general fund for the use of the board, subject to 37-1-101(6).”

Section 36. Section 37-11-106, MCA, is amended to read:

“37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

- (a) direct application;
- (b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or
- (c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

- (a) bactericidal agents;
- (b) debriding agents;
- (c) anesthetic agents;
- (d) anti-inflammatory agents;
- (e) antispasmodic agents; and
- (f) adrenocorticosteroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications ~~and must be purchased from a pharmacy certified under 37-7-321.~~ Topical medications dispensed under this section must comply with *United States food and drug administration* packaging and labeling guidelines ~~developed by the board of pharmacists under Title 37, chapter 7.~~

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.”

Section 37. Section 37-14-301, MCA, is amended to read:

“37-14-301. Limitation of license authority — exemptions. (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

- (a) Licensure is not required for:
 - (i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;
 - (ii) a person administering x-ray examinations related to the practice of dentistry or denturistry if the person is certified by the board of dentistry as having passed an examination testing the person’s proficiency to administer x-ray examinations; ~~or~~
 - (iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule; *or*
 - (iv) *a person who only operates industrial x-ray equipment that does not involve procedures administered on people.*
- (b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe x-ray procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously upon request of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection."

Section 38. Section 37-17-104, MCA, is amended to read:

"37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or, "psychologist", "psychological", or "psychologic";

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational ~~or charitable~~ institution, *business corporation, or research laboratory* insofar as these activities and services are a part of the duties of ~~his~~ the office or position ~~with~~ *within the confines of* the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of ~~his~~ *the supervised course of study of the student, intern, or resident in psychology;*

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of ~~his~~ *that person's* residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state *prior to providing those services* if ~~they~~ *the services are* to exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of ~~his~~ *the person's* former residence to perform activities and services, who has recently become a resident of this state and who has ~~applied~~ *submitted a completed application* for a license in this state, from performing ~~such~~ *the* activities and services pending disposition of ~~his~~ *the person's* application; and

(6) ~~the use of the term "social psychologist" by a person who:~~

(a) ~~has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;~~

~~(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and~~

~~(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;~~

~~(7)(6) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;~~

~~(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization."~~

Section 39. Section 37-18-104, MCA, is amended to read:

"37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) ~~veterinarians~~ *a veterinarian* in the performance of ~~their~~ *the veterinarian's* official duties, either civil or military, in the service of the United States unless ~~they engage the veterinarian is engaged~~ in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

~~(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;~~

~~(d)(c) a veterinarian residing on a border of a neighboring practicing in another state or country and authorized under the laws of that state or country to practice veterinary medicine, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state whose practice in this state is limited to an occasional case as that term is defined in board rule;~~

~~(e)(d) the employment of a veterinary medical students student who have has successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are student is employed by and work works under the immediate supervision of a veterinarian licensed and registered under this chapter; or~~

~~(f)(e) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.~~

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

- (b) minimum requirements of practical experience;
- (c) continuing education requirements;
- (d) limitations on practices and procedures that may be performed by certified individuals;
- (e) the use of specific drugs necessary for safe and proper practice of certified procedures;
- (f) content and administration of the certification test, including written and practical testing;
- (g) application and reexamination procedures; and
- (h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter. (Subsection (8) terminates January 1, 2008—sec. 11, Ch. 60, L. 2003.)

Section 40. Section 37-19-101, MCA, is amended to read:

“37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Arrangements” includes:
 - (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
 - (b) obtaining the necessary information for filing death certificates ~~and obtaining burial-transit permits~~;
 - (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
 - (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.
- (2) “At-need” arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:

- (a) a spouse;
- (b) a majority of adult children;
- (c) a parent;
- (d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;

- (c) be resistant to leakage and spillage;
 - (d) be rigid enough for handling with ease; and
 - (e) be able to provide protection for the health, safety, and integrity of crematory personnel.
- (14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.
- (15) "Crematory operator" means the person in charge of the licensed crematory facility.
- (16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.
- (17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.
- (18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (19) "Embalming" means:
- (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;
 - (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and
 - (c) restorative art.
- (20) "Funeral directing" includes:
- (a) supervising funerals;
 - (b) the making of preneed or at-need contractual arrangements for funerals;
 - (c) preparing dead bodies for burial, other than by embalming;
 - (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and
 - (e) representing to the public that one is a funeral director.
- (21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:
- (a) comply with any applicable public health law;
 - (b) preserve the dignity of the human remains;
 - (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and
 - (d) be secure from access by anyone other than authorized personnel.
- (22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.
- (23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 41. Section 37-35-202, MCA, is amended to read:

"37-35-202. Licensure requirements — examination — fees. (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for licensure as a licensed addiction counselor if the person has:

(a) received a baccalaureate *or advanced* degree in alcohol and drug studies, psychology, sociology, social work, *or* counseling, *or a related field comparable degree* from an accredited college or university; *or*

(b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination, *in writing only*, ~~process~~ as defined by rules adopted by the department.

(5) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".

(6) For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9 credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree.

Section 42. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

~~(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;~~

~~(2)(1)~~ fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

~~(3)(2)~~ establishing, in accordance with 37-1-134, application ~~and examination~~ fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

~~(4)(3)~~ (a) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board; ~~and~~

(b) establishing qualification requirements and license fees for ~~those branch offices identified in subsection (3)(a);~~

~~(5)(4)~~ for the certification of private investigator and private security guard training programs, including the certification of firearms training programs ~~and firearms instructors;~~

(5) *for the licensure of firearms instructors;*

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy ~~or proof of financial responsibility as the board considers necessary~~ with the board; and

(9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination.”

Section 43. Section 37-60-302, MCA, is amended to read:

“37-60-302. Qualifying agent and resident manager required — substitution. (1) Any ~~person not a resident of this state who~~ *out-of-state contract security company or proprietary security organization that* applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under ~~his~~ *the resident manager’s* direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board ~~by certified mail~~ of that fact and of the name of a substitute individual, who shall ~~make application~~ *apply* to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.”

Section 44. Section 37-60-303, MCA, is amended to read:

“37-60-303. License qualifications. (1) Except as provided in subsection (8), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

~~(b) is a citizen of the United States;~~

(b) is a citizen of the United States;

~~(c)~~*(c)* has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

~~(d)~~*(d)* has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

~~(e)~~*(e)* is not suffering from habitual drunkenness or from narcotics addiction or dependence;

~~(f)~~*(f)* is of good moral character; and

~~(g)~~*(g)* has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or *its the* equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service; *and*
- ~~(d) for a period of not less than 3 years:~~
- ~~(i) has been lawfully engaged in the private investigative business;~~
- ~~(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or~~
- ~~(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and~~
- ~~(e)~~(d) has fulfilled any other requirements as the board may by rule prescribe.

~~(4) Up to one half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript. The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

~~(5) Applicants~~ An applicant who will wear or carry ~~firearms~~ a firearm in performance of ~~their~~ the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as ~~it the~~ board may by rule prescribe.

~~(6) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

~~(7)~~(6) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

~~(8)~~(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

~~(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).~~

~~(e)~~(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 45. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) Except as provided in ~~37-60-303(8)~~ 37-60-303(7), an application for a license must be ~~made on a form prescribed by the board submitted to the department~~ and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

- (a) the full name and address of the applicant;
- (b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) one recent photograph of the applicant, of a type prescribed by the board department, and ~~two~~ one classifiable ~~sets~~ set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) The submittal of fingerprints ~~must be~~ is a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

~~(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."~~

Section 46. Repealer. Section 37-3-302, MCA, is repealed.

Section 47. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 127

[HB 370]

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REVISING PROCEDURES FOR CONTESTED CASE HEARINGS; ELIMINATING CERTAIN PERMIT APPLICATION FEE REQUIREMENTS; REVISING THE BOND RELEASE PROCEDURES; CLARIFYING THE PROHIBITION ON MINING CERTAIN LANDS; CLARIFYING THE HEARING REQUIREMENTS ON THE DEPARTMENT'S PERMIT DECISIONS; PROVIDING CRITERIA FOR AN ADMINISTRATIVELY COMPLETE BOND RELEASE APPLICATION; REQUIRING PUBLIC NOTICE FOR A BOND RELEASE; REVISING THE OBJECTION PROCESS FOR A BOND RELEASE; CLARIFYING PROCEDURES FOR MODIFICATIONS OF BOND RELEASE APPLICATIONS; CLARIFYING THE VEGETATION RECLAMATION REQUIREMENTS; ALLOWING A PERMITTEE TO REQUEST A CONTESTED CASE HEARING ON A PERMIT SUSPENSION OR REVOCATION; AMENDING SECTIONS 82-4-206, 82-4-223, 82-4-225, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-235, AND 82-4-251, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-206, MCA, is amended to read:

"82-4-206. Procedure for contested case hearings. (1) ~~A person aggrieved by a final decision of the department under this part~~ An applicant, permittee, or person with an interest that is or may be adversely affected may

request a hearing before the board *on any of the following decisions of the department* by submitting a written request stating the reason for the request within 30 days after the department's decision:

- (a) *approval or denial of an application for a permit pursuant to 82-4-231;*
- (b) *approval or denial of an application for a prospecting permit pursuant to 82-4-226;*
- (c) *approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;*
- (d) *approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or*
- (e) *approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.*

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1)."

Section 2. Section 82-4-223, MCA, is amended to read:

"82-4-223. Permit fee and surety Surety bond. ~~(1) An application fee of \$100 shall be paid before the permit required in this part shall be issued.~~

~~(2)(1)~~ Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in ~~the penal sum~~ *an amount* to be determined by the department of not less than \$200 for each acre or fraction thereof ~~thereof of an acre~~ of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of ~~such~~ *these* securities ~~shall must~~ be equal to or greater than the amount of the bond required for the bonded area. The level of bonding ~~shall must~~ be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

~~(3)(2)~~ In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but ~~in no event shall~~ the bond *may not* be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 3. Section 82-4-225, MCA, is amended to read:

"82-4-225. Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and ~~shall pay an application fee of \$50 and~~ shall file with the department a supplemental bond in the amount to be determined

under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but ~~in no case shall~~ the bond *may not* be reduced below \$10,000, except as provided in 82-4-223."

Section 4. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

~~(3) The application must be accompanied by a fee of \$100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.~~

~~(4)~~(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

~~(5)~~(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

~~(6)~~(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

~~(7)~~(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

~~(8)~~(7) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through ~~(7)~~ (6). In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through ~~(7)~~ (6). However, a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 5. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary

effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land

described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

- (a) within 300 feet of an occupied dwelling, unless waived by the owner;
- (b) within 300 feet of any public building, school, church, community, or institutional building, or public park;
- (c) within 100 feet of a cemetery;
- (d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) Strip- or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

- (a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and
- (b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

- (a) within an area designated unsuitable for strip or underground coal mining; or
- (b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the

applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge ~~systems~~ *system*, the national wilderness preservation system, *the national system of trails*, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act *or study rivers or study river corridors established in any guidelines issued under that act*, or national recreation areas designated by *an* act of congress; or

(b) *on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13."*

Section 6. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish

the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held *started* within 30 days of the request. For purposes of a hearing, the ~~department board or its hearings officer~~ may order site inspections of the area pertinent to the application. The ~~department board~~ shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 7. Section 82-4-232, MCA, is amended to read:

“82-4-232. Area mining required — bond — alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator’s method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater

productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) ~~The permittee may file a request~~ *an application* with the department for the release of all or part of a performance bond or deposit. ~~Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release~~ *The application and must contain a notification proposed public notice* of the precise location of the land affected, the number of acres *for which bond release is sought*, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) *The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:*

- (i) *the location and acreage of the land for which bond release is sought;*
- (ii) *the amount of bond release sought;*
- (iii) *a description of the completed reclamation, including the date of performance;*

(iv) *a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and*

- (v) *information required by rules implementing this part.*

(c) *The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.*

(d) *Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.*

(e) *Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.*

(f) *For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.*

(g) *If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes, but is not limited to:*

- (i) *the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;*

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

~~(b)(h) Upon receipt of the request and copies of the notification made under subsection (6)(a), the~~ The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. ~~The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if a public hearing is not held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.~~

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes, but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

~~(e)(k)~~ The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation

plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection ~~(6)(e)(ii)~~ (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond ~~or deposit~~ may not be released under this subsection ~~(6)(e)(ii)~~ (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

~~(d)(l)~~ If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e)(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality *or county* in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

~~(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.~~

~~(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.~~

~~(h) For the purpose of the hearing under subsection (G)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.~~

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the ~~alternate~~ *alternative* land use.

(ii) The ~~alternate~~ *alternative* land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The ~~alternate~~ *alternative* land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)"

Section 8. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other

constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

- (a) diverse, effective, and permanent;
 - (b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;
 - (c) at least equal in extent of cover to the natural vegetation of the area; and
 - (d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.
- (2) The reestablished plant species must:
- (a) be compatible with the approved postmining land use;
 - (b) have the same seasonal growth characteristics as the original vegetation;
 - (c) be capable of self-regeneration and plant succession;
 - (d) be compatible with the plant and animal species of the area; and
 - (e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.
- (3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:
- (a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;
 - (b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;
 - (c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.
- (4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)~~

Section 9. Section 82-4-235, MCA, is amended to read:

“82-4-235. Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

- (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture

publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, *pursuant to a permit issued by the department under this part*, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 10. Section 82-4-251, MCA, is amended to read:

“82-4-251. Noncompliance — suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee’s agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. *A permittee may request a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the requirements of Title 2, chapter 4, part 6.* When a permit has been revoked, the department may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless ~~a~~ *an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.*

(6) A person who has been issued a notice or an order of cessation pursuant to ~~this section subsection (1) or (2)~~ or a person who has an interest that is or may be adversely affected by an order *issued pursuant to subsection (1) or (2)* or by modification, vacation, or termination of ~~an~~ *that* order may ~~apply to the department for review of request a hearing before the board on that order within~~

30 days of its issuance or within 30 days of its modification, vacation, or termination. ~~Upon receipt of the application, the department shall make an investigation. The investigation must provide an opportunity for public hearing at the request of the applicant or the person who has an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it.~~ The filing of an application for review under this subsection may not operate as a stay of any order or notice. The ~~department board~~ shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 128

[HB 452]

AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS TO REDESIGN THE MEDICAID PROGRAM SPECIFICALLY INVOLVING INDIAN TRIBES, TRIBAL HEALTH CARE FACILITIES, AND INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REQUEST A WAIVER OF FEDERAL MEDICAID LAW SO THAT ANY REDUCTIONS IN MEDICAID ELIGIBILITY DO NOT SHIFT COSTS TO TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT TO WORK WITH TRIBAL GOVERNMENTS TO EXPLORE POSSIBILITIES FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM TO LEVERAGE FEDERAL FINANCIAL PARTICIPATION; REQUIRING THE DEPARTMENT TO EXPLORE OPTIONS OR WAIVERS OF MEDICAID LAW FOR THE PURCHASE OF PRESCRIPTION DRUGS ON A RESERVATION AT TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEVELOPMENT OF A POLICY AND PROCESS TO REVIEW INDIAN ELIGIBILITY ISSUES; REQUIRING THE DEPARTMENT TO WORK WITH

INDIAN TRIBES TO IMPROVE THE PROVISION OF MEDICAID SERVICES TO INDIANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Protection of tribal and Indian health service facilities from cost-shifting — seeking to leverage federal financial participation for state children's health insurance program and medicaid. (1) The department shall seek exemptions under federal medicaid law or regulations to protect Indian health services and tribal facilities from changes in eligibility categories, covered services, and reimbursement levels under the medicaid program that could potentially result in a direct shift of costs from the 100% federal medicaid matching available under medicaid to either Indian health services or tribally sponsored health care services.

(2) The department shall work with tribes or representatives from the federal Indian health service to seek mechanisms, including, if necessary, a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(b), to ensure that federal Indian health service-eligible medicaid participants who live on reservations may have any prescription filled at tribal or Indian health service health care facilities.

(3) The department shall work with tribes to explore the options for the state children's health insurance program to leverage 100% federal financial participation for health care services to Indian children.

(4) The department shall engage the federal centers for medicare and medicaid services and the United States congress to support efforts to have all services provided by and referred from an Indian health service included in the state medicaid plan eligible for the 100% federal financial participation match under medicaid regardless of the location where services are provided.

(5) (a) The department shall develop a policy and process to periodically review Indian-eligibility issues as they relate to medicaid and to include tribal government, urban Indian, and Indian health service representation in the development of a policy and process. Reviews conducted by the department in areas on or near reservations or in urban areas with significant Indian populations must include consultation with representatives of tribal governments and urban Indian programs.

(b) The department shall explore the issues and feasibility of applying for a federal waiver of medicaid law for a demonstration project to delegate authority to eligible tribes for determination and certification of medicaid eligibility.

(6) The department shall work with tribes to foster a spirit of cooperation, to identify and remove current institutional barriers that limit the participation of tribal members in the medicaid program, and to develop strategies, including education, to improve the mechanics of providing medicaid services to Indians by:

(a) ensuring that tribes have an adequate opportunity to review and verify data used to monitor medicaid services and eligibility status and to modify or promote changes in medicaid policy;

(b) consulting with tribal and urban Indian representatives on the effective use and appropriate sources of information on health care needs of Indians;

(c) at the request of a tribal representative, conducting technical assistance workshops to address issues specific to tribal needs regarding matters of

centralized billing procedures, sound health care business practices, and development of needed health care infrastructure; and

(d) in compliance with the requirements of 2-15-141 through 2-15-143, consulting with tribes on any policy changes that may impact services or programs operated by tribes.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 129

[HB 463]

AN ACT INCREASING THE CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; INCREASING THE MAXIMUM ALLOWABLE CREDIT; EXTENDING THE DURATION OF THE CREDIT; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA, AND SECTION 8, CHAPTER 516, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-225, MCA, is amended to read:

“75-2-225. (Temporary) Amount and duration of credit — how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.

(2) Subject to 75-2-226(2), an applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material. ~~If postconsumer glass was used in recycled material prior to January 1, 2002, but on or after January 1, 2001, an applicant is entitled to a credit for calendar year 2002.~~

(3) (a) The amount of the credit that may be claimed under this section is ~~\$7~~ \$8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is ~~\$1,500~~ \$2,000 or the total amount of fees due, whichever is less. (Terminates December 31, 2005—see. 8, Ch. 516, L. 2001 2009.)”

Section 2. Section 75-2-226, MCA, is amended to read:

“75-2-226. (Temporary) Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, ~~2006~~ 2010.

(3) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

(4) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year. (Terminates December 31, ~~2005~~ sec. 8, Ch. 516, L. 2001 2009.)"

Section 3. Section 8, Chapter 516, Laws of 2001, is amended to read:

"Section 8. Termination. [This act] terminates December 31, ~~2005~~ 2009."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates December 31, 2009.

Approved March 30, 2005

CHAPTER NO. 130

[SB 24]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 59TH LEGISLATURE; AMENDING SECTIONS 1-1-516, 2-2-106, 2-15-1821, 2-15-1822, 2-18-1204, 3-10-301, 5-7-112, 7-1-2111, 7-2-2422, 7-2-2424, 7-3-173, 7-35-2121, 13-13-211, 15-1-121, 15-1-122, 15-24-3005, 15-30-111, 15-31-115, 15-61-102, 15-65-121, 15-70-301, 16-1-101, 17-2-131, 17-5-507, 17-6-407, 20-3-351, 20-9-141, 20-9-501, 20-10-144, 20-10-146, 20-15-221, 20-20-303, 20-25-308, 23-2-502, 23-2-511, 23-2-514, 23-2-515, 23-2-521, 23-2-614, 27-1-306, 30-14-222, 30-14-223, 30-14-901, 30-14-1407, 33-22-140, 37-10-304, 39-11-201, 39-11-204, 39-71-1011, 39-71-1014, 39-71-2316, 40-5-906, 40-6-405, 41-3-302, 41-3-437, 41-3-445, 44-1-1102, 46-14-221, 46-14-222, 46-19-202, 50-20-101, 50-60-203, 52-2-304, 53-6-703, 53-7-109, 61-3-403, 61-3-522, 61-3-722, 61-4-223, 61-4-515, 61-4-520, 61-8-906, 61-8-913, 61-10-227, 61-10-233, 71-3-534, 72-1-103, 82-15-103, AND 85-7-304, MCA; AND REPEALING SECTIONS 15-7-104, 15-32-108, 20-6-212, AND 85-7-2141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-516, MCA, is amended to read:

“1-1-516. State Korean war veterans’ memorial — Butte. (1) The Korean war veterans’ memorial located in Stodden Park, Butte, Montana, dedicated to the men and women who served the United States in the Republic of Korea, is an official state Korean war veterans’ memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of a state Korean war veterans’ memorial on official state maps.”

Section 2. Section 2-2-106, MCA, is amended to read:

“2-2-106. Disclosure. (1) ~~(a) Prior to December 15 of each even-numbered year, each elected official or department director~~ (a) Prior to December 15 of each even-numbered year, each *state officer or holdover senator* shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person’s name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of political practices shall make the business disclosure statements available to any individual upon request."

Section 3. Section 2-15-1821, MCA, is amended to read:

"2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) ~~The~~ *Subject to subsections (4)(b) and (4)(c), the* members of the coal board are selected as follows:

(i) two from the impact areas; *and*

(ii) two with expertise in education; ~~and.~~

~~(iii)(b) At least two but not more than four members must be appointed from each district provided for in 5-1-102.~~

~~(b)(c) The~~ *In making the appointments, the* governor shall ~~further, in making these appointments,~~ consider people from ~~these~~ *the following* fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning."

Section 4. Section 2-15-1822, MCA, is amended to read:

"2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) (a) ~~The~~ *Subject to subsections (3)(b) and (3)(c), the* hard-rock mining impact board ~~shall~~ *must* include among its members:

~~(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;~~

~~(b) at least two persons from each district provided for in 5-1-102;~~

~~(c)(i)~~ a representative of the hard-rock mining industry;

~~(d)(ii)~~ a representative of a major financial institution in Montana;

~~(e)(iii)~~ a person who, when appointed to the board, is an elected school district trustee;

~~(iv)~~ a person who, when appointed to the board, is an elected county commissioner;

~~(v)~~ a member of the public-at-large.

(b) Three persons appointed to the board must reside in an area impacted or expected to be impacted by large-scale mineral development.

(c) At least two persons must be appointed from each district provided for in 5-1-102.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, ~~and the~~. The board shall elect a presiding officer from among its members.”

Section 5. Section 2-18-1204, MCA, is amended to read:

“2-18-1204. Salary and benefits protection — employee transfer. (1)

An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(a) the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held;

(b) retain all accrued sick leave credits;

(c) retain, cash out, or use accrued vacation leave credits to extend the employee’s effective layoff date; and

(d) relocation expenses as provided in state policy.

(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, ~~including those funds subject to transfer under the provisions of section 6, Chapter 524, Laws of 1995.”~~

Section 6. Section 3-10-301, MCA, is amended to read:

“3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices’ courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$7,000, exclusive of court costs;

(b) in actions for damages not exceeding \$7,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding \$7,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed \$7,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding \$7,000 imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding \$7,000 imposed by a statute or assessed by an order of a *conservation* district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed \$7,000, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed \$7,000, exclusive of court costs;

(i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed \$7,000.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 7. Section 5-7-112, MCA, is amended to read:

"5-7-112. Payment threshold — inflation adjustment. For calendar ~~years 2002 through year~~ 2004, the payment threshold *referred to* in 5-7-102, 5-7-103, and 5-7-208 is \$2,150. The commissioner shall adjust the threshold amount following a general election by multiplying the threshold amount valid for the year in which the general election was held by an inflation factor, adopted by the commissioner by rule. The rule must be written to reflect the annual average change in the consumer price index from the prior year to the year in which the general election is held. The resulting figure must be rounded up or down to the nearest \$50 increment. The commissioner shall adopt the adjusted amount by rule."

Section 8. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of \$50 million or more;

(b) second class—all counties having a taxable valuation of \$30 million or more and less than \$50 million;

(c) third class—all counties having a taxable valuation of \$20 million or more and less than \$30 million;

(d) fourth class—all counties having a taxable valuation of \$15 million or more and less than \$20 million;

(e) fifth class—all counties having a taxable valuation of \$10 million or more and less than \$15 million;

(f) sixth class—all counties having a taxable valuation of \$5 million or more and less than \$10 million;

(g) seventh class—all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001; ~~and~~

(i) 6% of the taxable value of the county on January 1 of each tax year; ~~and~~

(j) *45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702."*

Section 9. Section 7-2-2422, MCA, is amended to read:

"7-2-2422. Certification of list of names. (1) The clerk of ~~the district court~~ of the county from which ~~said a new county may be~~ is segregated or, ~~in the event of such if a new county being is~~ segregated from two or more counties, the clerks of ~~district court~~ of each of ~~such the~~ counties shall take the names of ~~such persons as that~~ appear upon the jury list for ~~such the~~ year, which may have been certified to ~~him or to them the clerk or clerks of district court~~ by the jury commission or commissions of ~~his or their the~~ respective county or counties to be residents of the territory embraced in ~~such the~~ new county, and shall certify the ~~same names~~ to the clerk of ~~the district court~~ of the new county.

(2) ~~Such~~ The names shall then constitute the jury list for ~~such the~~ new county for the ~~period as aforesaid~~ year.

(3) ~~Such~~ The new list shall must be made and certified by ~~such the~~ clerk or clerks of ~~district court~~ of the existing county or counties as soon after the creation of ~~such the~~ new county as may be practicable and in any event within 5 days after a request ~~therefor shall be~~ for the list is made by the clerk of the district court of the new county."

Section 10. Section 7-2-2424, MCA, is amended to read:

"7-2-2424. Role of clerk of district court in new county. The clerk of ~~the district court~~ of the new county shall ~~then~~ file and prepare ~~his the~~ jury list and boxes in accordance with the general law pertaining to the duties of clerks of ~~district court~~ with relation to jury lists and boxes."

Section 11. Section 7-3-173, MCA, is amended to read:

“7-3-173. Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission ~~shall~~ *must* be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) ~~in 1984 and thereafter~~ whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission,;

~~(a) in 1984 to implement the provisions of as required by Article XI, section 9(2), of the Montana constitution, as provided in section 2, Chapter 70, Laws of 1977;~~

~~(b)~~ within 1 year after the 10-year period referred to in subsection (1)(c).”

Section 12. Section 7-35-2121, MCA, is amended to read:

“7-35-2121. District budget — report. (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

~~(2) Insofar as the same As far as the county budget system can be made applicable, the county budget system, part 23 of chapter 6, shall govern that system governs the operation of cemetery districts created under this part.”~~

Section 13. Section 13-13-211, MCA, is amended to read:

“13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in ~~13-13-212(3)~~ 13-13-212(2).”

Section 14. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, ~~and~~ boat, *and aircraft* taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

- (iv) 61-3-317;
- (v) 61-3-321;
- (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
- (vii) Title 61, chapter 3, part 7;
- (viii) 5% of the fees collected under 61-10-122;
- (ix) 61-10-130;
- (x) 61-10-148; and
- (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes *collected* pursuant to *the former provisions of* Title 15, chapter 31, part 7;
- ~~(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;~~
- ~~(h)~~(g) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- ~~(i)~~(h) late filing fees pursuant to 61-3-220;
- ~~(j)~~(i) title and registration fees pursuant to 61-3-203;
- ~~(k)~~(j) veterans' cemetery license plate fees pursuant to 61-3-459;
- ~~(l)~~(k) county personalized license plate fees pursuant to 61-3-406;
- ~~(m)~~(l) special mobile equipment fees pursuant to 61-3-431;
- ~~(n)~~(m) single movement permit fees pursuant to 61-4-310;
- ~~(o)~~(n) state aeronautics fees pursuant to 67-3-101; and
- ~~(p)~~(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the ~~probation and parole supervisory~~ fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001.~~

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For each fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:~~

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

~~(i) for fiscal years 2002 and 2003:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$4,812~~
~~Silver Bow~~	~~Ramsay Industrial~~	~~597,594;~~
(ii)(i) for fiscal years ~~2004 and year~~ 2005:		
Missoula County	Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and
~~(iii)(ii)~~ \$0 for all succeeding fiscal years.		

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through ~~(1)(p)~~ (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(13) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 15. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal

year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b)(a) \$0 in fiscal years 2004 and year 2005;~~

~~(c)(b) \$3,050,205 in fiscal year 2006; and~~

~~(d)(c) in each succeeding fiscal year, the amount in subsection (2)(e) (2)(b), increased by 1.5% in each succeeding fiscal year.~~

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel ~~{subject to the search and rescue surcharge}~~ *subject to the fee* in 23-2-517;

(ii) \$2 a year for each snowmobile ~~{subject to the search and rescue surcharge}~~ *subject to the fee* in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle ~~{subject to the search and rescue surcharge}~~ *subject to the fee* in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which

vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 16. Section 15-24-3005, MCA, is amended to read:

“15-24-3005. Electrical generation facility impact fee for local governmental units and school districts. (1) (a) If an owner or operator of an electrical generation facility, as defined in 15-24-3001, is exempt from property taxation pursuant to 15-24-3001, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in 15-24-3001.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to subsection (1).

(3) The impact fee must be distributed to the local governmental unit for local impacts and to the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to ~~the percentage allocation required in~~ subsection (3). The county in which the electrical generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of this section, a “local governmental unit” means a county, city, or town. If an exempt electrical generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility is not located within the district.

(6) Impact fees imposed under subsection (4) must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.”

Section 17. Section 15-30-111, MCA, is amended to read:

“15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder’s income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105~~(15)~~;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer’s Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend; to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer’s return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The

provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude ~~up to the amount of the loan payment received pursuant to subsection (9)(a)(iv), not to exceed \$5,000,~~ from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment *during the tax year* made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

Section 18. Section 15-31-115, MCA, is amended to read:

“15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. ~~Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.~~”

Section 19. Section 15-61-102, MCA, is amended to read:

“15-61-102. Definitions. As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

- (1) “Account administrator” means:
 - (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;
 - (b) a health care insurer as defined in 33-22-125;
 - (c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;
 - (d) an employer if the employer has a self-insured health plan under ERISA;
 - (e) the account holder or an employee for whose benefit the account in question is established;
 - (f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;
 - (g) an attorney licensed to practice law in this state;

(h) a licensed public accountant or a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, ~~Public Law 93-406~~ 29 U.S.C. 1001, *et seq.*

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201."

Section 20. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. ~~For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund.~~ The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and

television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce, ~~except as provided in section 1, Chapter 11, Special Laws of August 2002; and~~

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1)

The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the

department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.”

Section 21. Section 15-70-301, MCA, is amended to read:

“15-70-301. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) “Agricultural use” means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) “Bond” means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

15-70-301. (Effective on occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of *for* testing and materials.

(b) Biodiesel is also known as "B-20".

(3) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(5) "Cardtroll" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(6) "Department" means the department of transportation.

(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(13) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(16) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(18) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(19) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or

irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 22. Section 16-1-101, MCA, is amended to read:

“16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 4 and 6 of this title may be cited as the “Montana Alcoholic Beverage Code”.

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana acting through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state; and of the state’s power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes.”

Section 23. Section 17-2-131, MCA, is amended to read:

“17-2-131. Genetic engineering technology research and development account created. There is created in the current restricted subfund a restricted account for funds appropriated to Montana state university-Bozeman for applied genetic engineering technology research and development. Funds appropriated under section 2, Chapter 686, Laws of 1989, and money contributed by the Montana agriculture industry must be deposited in the account and are restricted to genetic engineering technology research and development only.”

Section 24. Section 17-5-507, MCA, is amended to read:

“17-5-507. State pledge of gasoline tax — use. (1) The state pledges, and appropriates, and directs to be credited as received to the debt service account, as herein defined in 17-5-401, that portion of the net proceeds from the collection of gasoline taxes which that may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and in this section must remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation taxes. The term “net proceeds”, as used herein in this section, means all funds on hand in the state treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such those taxes for which applications have been made pursuant to law but which that have not yet been paid or rejected. The term “debt service account”, as used herein in this section, means a separate highway fund which that is created within the debt service fund type established by 17-2-102 and shall must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon on those bonds when due, so long as any such the bonds or interest remain unpaid.

(2) Money in the debt service account shall must be used to:

(a) first, to pay interest and principal when due on highway bonds;

(b) second, to accumulate a reserve, in the amount required below in subsection (2)(c), for the further security of such those payments; and

(c) ~~and third, to~~ maintain ~~this~~ a reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal ~~which that~~ will become due on all ~~such~~ bonds ~~which that~~ are then outstanding in any subsequent fiscal year.

(3) Money ~~at any time~~ received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) ~~shall~~ *must* be transferred by the treasurer to the *highway revenue account in the state special revenue fund, highway account*. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to ~~said that~~ account an amount sufficient to restore ~~said the~~ balance from the next receipts of net proceeds from the collection of gasoline taxes."

Section 25. Section 17-6-407, MCA, is amended to read:

"17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which ~~the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, funds allocated for that purpose~~ and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations; and

(c) grants, donations, and private or public income.

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

- (f) the ability of the corporation, with its plan, to:
 - (i) monitor and provide financial oversight of recipients of microbusiness loans;
 - (ii) administer a revolving loan fund; and
 - (iii) investigate and qualify financing proposals and to service credit accounts;
 - (g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and
 - (h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.
- (6) Development loan funds may be used by a certified microbusiness development corporation to:
- (a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;
 - (b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed \$35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed \$35,000;
 - (c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed \$35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed \$35,000.
- (7) Development loan funds may not be:
- (a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or
 - (b) used to:
 - (i) refinance a nonperforming loan held by a financial institution; or
 - (ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.
- (8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least \$1 from other sources for each \$6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.
- (9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the

market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)”

Section 26. Section 20-3-351, MCA, is amended to read:

“20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, ~~if there is more than one elementary district in which high school buildings are located, the trustees of the elementary district designated by the high school boundary commission;~~ and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.”

Section 27. Section 20-9-141, MCA, is amended to read:

“20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under ~~section 244, Chapter 574, Laws of 2001~~ 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 28. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the

employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under ~~section 245, Chapter 574, Laws of 2001~~ 20-9-631;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The

retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to

the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.”

Section 29. Section 20-10-144, MCA, is amended to read:

“20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The “schedule amount” of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the

county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under ~~section 244, Chapter 574, Laws of 2001~~ 20-9-630;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy

requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.”

Section 30. Section 20-10-146, MCA, is amended to read:

“20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under ~~section 246, Chapter 574, Laws of 2001~~ 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the

county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 31. Section 20-15-221, MCA, is amended to read:

"20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election ~~shall must~~ be conducted in accordance with the election provisions of this title whenever ~~such the~~ provisions are made applicable to community college districts. ~~Such elections shall~~ Elections must be conducted by the component elementary school districts within ~~such the~~ community college district upon the order of the board of trustees of the community college district. The order ~~shall must~~ be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election ~~shall must~~ be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, *with* the last insertion to be no more than 1 week prior to the date of the election. This notice ~~shall be~~ is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) ~~Should~~ If trustees ~~be are~~ are elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected ~~shall may~~ cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system ~~or voting machines are~~ is not used in the component elementary school district or districts ~~which that~~ conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in ~~such the~~ component districts at the expense of the community college district, but in all other respects ~~said the elections shall~~ must be conducted in accordance with the school election laws. All costs incident to election of the community college trustees ~~shall must~~ be borne by the community college district, including one-half of the compensation of the judges for the school elections; ~~provided that. However,~~ if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election."

Section 32. Section 20-20-303, MCA, is amended to read:

“20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of ~~13-2-404 and 13-13-301(1)~~. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge ~~shall~~ *must* be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.”

Section 33. Section 20-25-308, MCA, is amended to read:

“20-25-308. Prohibition on transfer to foundation. ~~(1) Except as provided in subsection (2), in~~ In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

- ~~(a)~~(1) money in the higher education funds provided for in 17-2-102;
- ~~(b)~~(2) excess proceeds of money borrowed pursuant to 20-25-402; and
- ~~(c)~~(3) real or personal property acquired with money listed in subsection (1)~~(a)~~ or proceeds listed in subsection ~~(1)(b)~~ (2).

~~(2) Subsection (1) does not apply to the lease for the athletic complex at Montana state university-Bozeman provided for in section 5, Chapter 478, Laws of 1995. The land lease for the athletic complex must be of a term not to exceed 7 years from the date of approval of the lease.”~~

Section 34. Section 23-2-502, MCA, is amended to read:

“23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) “Certificate of number” means the certificate issued by the county treasurer to the owner of a motorboat *or sailboat* or by the department of justice to dealers or manufacturers, assigning the motorboat *or sailboat* an identifying number and containing other information as required by the department of justice.

(2) “Dealer” means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(3) “Department” means the department of fish, wildlife, and parks of the state of Montana.

(4) “Documented vessel” means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) “Identifying number” means the boat number set forth in the certificate of number and properly displayed on the motorboat *or sailboat*.

(6) “Lienholder” means a person holding a security interest.

(7) “Manufacturer” means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(8) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(9) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(10) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(12) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(13) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(15) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of all fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(20) "Waters of this state" means any waters within the territorial limits of this state."

Section 35. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats or sailboats prohibited — display of registration decal. (1) A motorboat on the waters of this state; *that is* propelled by a motor or an engine of any description; *or a sailboat on the waters of this state* must be properly numbered and display a valid registration decal. A person may not operate or give permission for the operation of any motorboat *or sailboat* on the waters of this state unless the motorboat *or sailboat* is numbered and displays a valid registration decal in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat *or sailboat* is in effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on the motorboat *or sailboat*; and

(c) a temporary permit has been obtained from the county in which ~~the boat~~ *a motorboat* is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat *or sailboat* from a registered ~~boat~~ dealer or manufacturer, the transferred motorboat *or sailboat* may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and registration decal required by subsection (1) if when the motorboat *or sailboat* is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer ~~reciting~~ *showing* the date of the transfer of ownership is retained in the motorboat *or sailboat* and is ~~exhibited~~ *shown* to a warden or other officer upon request."

Section 36. Section 23-2-514, MCA, is amended to read:

"23-2-514. Exemption from numbering provisions. A motorboat *or sailboat* is not required to be numbered under this part if it is:

(1) covered by a number in effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state if the motorboat *or sailboat* has not been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use *of the motorboat or sailboat* and the owner ~~must~~ *shall* apply for a Montana number, certificate of number, and registration decal.

(2) a motorboat *or sailboat* from a country other than the United States temporarily using the waters of this state;

(3) a motorboat *or sailboat* whose owner is the United States, a state, or a subdivision of a state; or

(4) a ship's lifeboat."

Section 37. Section 23-2-515, MCA, is amended to read:

“23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 or 23-2-513 must display a registration decal. For this purpose, the county treasurer, upon proof of payment of the fee in lieu of tax as required by 15-16-202 for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft, shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat, ~~or~~ sailboat, *or personal watercraft* do not expire while the motorboat, ~~or~~ sailboat, *or personal watercraft* remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers.”

Section 38. Section 23-2-521, MCA, is amended to read:

“23-2-521. Equipment. (1) Every motorboat or vessel must have aboard:

(a) ~~one personal flotation device that is approved by the United States coast guard approved personal flotation device and that is~~ in good and serviceable condition for each person on board, provided that a person who has not reached ~~his 12th birthday~~ 12 years of age must have a *life preserver that is approved by the United States coast guard approved life preserver* and that is properly fastened to ~~his~~ the person when occupying a motorboat or vessel under 26 feet in length while the motorboat or vessel is in motion;

(b) if carrying or using an inflammable or toxic fluid in an enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department that must be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a *fixed fire extinguishing system that is approved by the United States coast guard approved fixed fire extinguishing system*, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry the portable fire extinguishers or fire extinguishing systems.

(2) ~~Every motorboat or vessel must have the~~ *The* carburetor or carburetors of each of ~~its the~~ engines of a motorboat or vessel (except outboard motors) ~~using that use~~ gasoline as fuel *must be* equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of an internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 dbA or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005). The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat *or vessel*:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race;

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races; or

(iii) operated by an authorized agent of federal, state, or local government to carry out ~~his~~ *the* duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), a vessel may not be equipped with a siren, and a person may not use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel ~~must~~ *shall* sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels must display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel shall wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet must have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section."

Section 39. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, with respect to registration, registration decals, *certificates of title*, and ~~certification~~ *certificates* of ownership; do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, *certificates of title*, and ~~certification~~ *certificates of ownership* do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 40. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, *or* the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, ~~or another nationally published used vehicle or appraisal guide approved by the department of revenue.~~ Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

Section 41. Section 30-14-222, MCA, is amended to read:

"30-14-222. Injunctions — damages — production of evidence. (1) Any person who is or will be injured, the department, or the attorney general may maintain an action to enjoin an act that is in violation of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 and for the recovery of damages. If the court finds that the defendant is violating or has violated any of the provisions of 30-14-205, *through* 30-14-214, or 30-14-216 through 30-14-218, it shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the greater of three times the amount of actual damages sustained or \$1,000.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to \$500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, or 30-14-224.

(4) In an action brought by a party other than the state, the prevailing party is entitled to attorney fees and costs."

Section 42. Section 30-14-223, MCA, is amended to read:

"30-14-223. Department's institution of suit. Upon the violation of any of the provisions of 30-14-205, *through* 30-14-214, or 30-14-216 through

30-14-218 by any business, the department may institute a proceeding in a court of competent jurisdiction for the forfeiture of the business's charter, rights, franchises or privileges, and powers exercised by the business and to permanently enjoin it from transacting business in this state. If in the proceeding the court finds that the business is violating or has violated any of the provisions of 30-14-205, ~~through~~ 30-14-214, or 30-14-216 through 30-14-218, the court shall enjoin the business from doing business in this state permanently or for a period of time that the court orders or the court shall annul the charter or revoke the franchise of the business."

Section 43. Section 30-14-901, MCA, is amended to read:

"30-14-901. Discrimination in price. (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 4 and 6."

Section 44. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer

awareness program established in ~~30-14-1405~~ *30-14-1406*. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in ~~30-14-1405~~ *30-14-1406*. Any excess civil fines, costs, or fees must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced.”

Section 45. Section 33-22-140, MCA, is amended to read:

“33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) “Beneficiary” has the meaning given the term by 29 U.S.C. 1002(33).
- (2) “Church plan” has the meaning given the term by 29 U.S.C. 1002(33).
- (3) “COBRA continuation provision” means:
 - (a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as it relates to pediatric vaccines;
 - (b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, ~~Public Law 93-406~~ *29 U.S.C. 1001, et seq.*; or
 - (c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.
- (4) (a) “Creditable coverage” means coverage of the individual under any of the following:
 - (i) a group health plan;
 - (ii) health insurance coverage;
 - (iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;
 - (iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;
 - (v) Title 10, chapter 55, United States Code;
 - (vi) a medical care program of the Indian health service or of a tribal organization;
 - (vii) the Montana comprehensive health association provided for in 33-22-1503;
 - (viii) a health plan offered under Title 5, chapter 89, of the United States Code;
 - (ix) a public health plan;
 - (x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).
- (b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

(17) "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if a court has ordered

that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 46. Section 37-10-304, MCA, is amended to read:

"37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of ~~optometrists~~ *optometry* with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents ~~must~~ *shall* satisfactorily complete a course referred to in subsection (1)(a) and ~~must~~ pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which~~ *that* is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.

(2) (a) Each person desiring to commence the practice of optometry shall:

(i) pass an examination; of the international association of boards of examiners in optometry; on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which~~ *that* is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination.”

Section 47. Section 39-11-201, MCA, is amended to read:

“39-11-201. (Temporary) Grant review committee — appointment — powers and duties — rulemaking authority. (1) There is a seven-member ~~loan~~ grant review committee, as follows:

(a) two representatives from the private sector representing economic development, appointed by the governor;

(b) two representatives from the business community, one appointed by the president of the senate and one appointed by the speaker of the house, one of whom serves on a local workforce investment board;

(c) one representative from the governor’s office, appointed by the governor;

(d) one representative from the department of revenue, appointed by the governor; and

(e) one representative from the department of labor and industry, appointed by the governor.

(2) The committee shall award training grants to a primary sector business qualified under 39-11-202 after a determination that the primary sector business:

(a) has prospects for achieving commercial success and for creating new jobs in the state;

(b) has prospects for collaboration between the public and private sectors of the state’s economy;

(c) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(d) can provide matching funds; and

(e) can be reasonably expected to provide an economic return within a reasonable period of time.

(3) A committee member may not personally apply for or receive a primary sector business workforce training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose the nature of the affiliation and, if the committee member is a board member or officer of the organization, may not participate in the decision of the committee regarding the grant application.

(4) The committee shall adopt rules to:

(a) provide for grant application procedures;

(b) develop procedures for awarding grants pursuant to the criteria provided in 39-11-202; and

(c) develop independent review and audit procedures to ensure that grants made are used for the purposes identified in the grant contracts.

(5) All decisions of the committee are final and are not subject to the contested case provisions of Title 2, chapter 4.

(6) The committee is allocated to the office of economic development for administrative purposes only as provided in 2-15-121. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 48. Section 39-11-204, MCA, is amended to read:

“39-11-204. (Temporary) Board of investment loans. The office of economic development may obtain a maximum of \$10 million in outstanding loans from the board of investments issued pursuant to the Municipal Finance Consolidation Act of 1983 authorized in Title 17, chapter 5, part 16, to provide financial assistance for primary sector business workforce training grants authorized by the ~~loan grant review~~ committee pursuant to criteria outlined in 39-11-202. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 49. Section 39-71-1011, MCA, is amended to read:

“39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) ~~“Board of rehabilitation certification”~~ *“Commission on rehabilitation counselor certification”* means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) “Disabled worker” means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) “Rehabilitation benefits” means benefits provided in 39-71-1006 and 39-71-1025.

(4) “Rehabilitation plan” means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker’s actual wage loss.

(5) “Rehabilitation provider” means a rehabilitation counselor certified by the ~~board for rehabilitation certification~~ *commission on rehabilitation counselor certification* and designated by the insurer.

(6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work."

Section 50. Section 39-71-1014, MCA, is amended to read:

"39-71-1014. Rehabilitation services — required and provided by insurers. (1) Rehabilitation services are required for disabled workers and may be initiated by:

- (a) an insurer by designating a rehabilitation provider; or
- (b) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered through a rehabilitation counselor certified by the ~~board of rehabilitation certification~~ *commission on rehabilitation counselor certification.*"

Section 51. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) ~~except as provided in section 21, Chapter 4, Special Laws of May 1990,~~ enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may ~~only~~ be adopted and changed *only by* using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, (33 U.S.C. 901, et seq.), the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

(n) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

Section 52. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for ~~a term~~ *terms* of 2 years. The board consists of ~~five~~ *six* members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or *the administrator's* designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts, ~~and~~

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 53. Section 40-6-405, MCA, is amended to read:

“40-6-405. Surrender of newborn to emergency services provider — temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation, and if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public; *and*

~~(v) a parent may contact the safe delivery line established under 40-6-415 for more information and counseling; and~~

~~(vi)~~(v) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

~~(b) provide the parent with the pamphlet produced under 40-6-415 and inform the parent that the parent may receive counseling or medical attention;~~

~~(c)~~(b) inform the parent that information that the parent provides will not be made public;

(d)(c) ask the parent for the parent's name;

(e)(d) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

~~(f)~~(e) inform the parent that the department can provide confidential services to the parent; and

~~(g)~~(f) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights."

Section 54. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services — voluntary protective services agreement. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent or other person responsible for a child's welfare for the purpose of keeping the child safely in the home.

(b) The department shall inform a parent or other person responsible for a child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decisionmaking meeting and implementation of safety plans developed during the ~~conference~~ meeting;

(b) a professional evaluation and treatment of a parent or child, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home placement pursuant to the agreement must be returned to the parents within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department.”

Section 55. Section 41-3-437, MCA, is amended to read:

“41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child’s parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in ~~41-3-438(2)~~ 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 56. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding *as to* whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement *and if it is* established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

- (i) the child is being cared for by a fit and willing relative;
- (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;
- (iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;
- (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or
- (v) the child meets the following criteria:
 - (A) the child has been adjudicated a youth in need of care;
 - (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
 - (C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests *of the child*; and
 - (D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.
- (7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 57. Section 44-1-1102, MCA, is amended to read:

"44-1-1102. Procedure when patrol officer accepts bail or driver's license in lieu of bail. (1) If the patrol officer accepts bail, the patrol officer shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

(2) If the patrol officer accepts an unexpired driver's license in lieu of bail, the patrol officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The patrol officer shall deliver the driver's license to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may extend the date of the driving permit for a period up to 6 months from the defendant's initial appearance date.

(3) The ~~judge~~ *justice of the peace* shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the court."

Section 58. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor

shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ *facility* of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the state as a district court expense.”

Section 59. Section 46-14-222, MCA, is amended to read:

“46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of public health and human services, the prosecution, or the defendant or the defendant’s legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate ~~institution~~ *facility* of the department of public health and human services.”

Section 60. Section 46-19-202, MCA, is amended to read:

“46-19-202. Proceedings following determination regarding fitness.

(1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that the defendant lacks fitness, the execution of judgment must be suspended and the court shall commit the defendant to the custody of the superintendent of the Montana state hospital to be placed in an appropriate ~~institution~~ *facility* of the department of public health and human services for as long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or the defendant’s legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.”

Section 61. Section 50-20-101, MCA, is amended to read:

“50-20-101. Short title. ~~This chapter shall be known and~~ *part* may be cited as the “Montana Abortion Control Act”.”

Section 62. Section 50-60-203, MCA, is amended to read:

“50-60-203. Department to adopt state building code by rule. (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to

persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, ~~or local government~~ county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers."

Section 63. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care; and

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care ~~in the initiative~~.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; and

(v) a local citizen review board as provided for in 41-3-1003.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 64. Section 53-6-703, MCA, is amended to read:

"53-6-703. Managed care community network. (1) A managed care community network shall comply with the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) The department, prior to entering into a contract, shall require that a managed care community network demonstrate to the department its ability to bear the level of financial risk being assumed by servicing enrollees under a contract for comprehensive physical or mental health care services. The department shall by rule adopt criteria for assessing the financial solvency of a network. The rules must consider risk-bearing and management techniques and protections against financial insolvency; if a managed care community

network is declared insolvent or bankrupt, as determined appropriate by the department. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The department's criteria must be based on sound actuarial, financial, and accounting principles. The department is responsible for monitoring compliance with the rules. The department shall provide for independent review of any contract provisions and contract compliance with the financial solvency rules.

(4) A managed care community network may not begin operation before the effective date of rules adopted by the department to implement the changes made by Chapter 466, Laws of 2001, under this part, the approval of any necessary federal waivers, and the completion of the review of an application submitted to the department. The department may charge the applicant an application review fee for the department's actual cost of review of the application. The fee must be adopted by rule by the department. Fees collected by the department must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the department to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c)."

Section 65. Section 53-7-109, MCA, is amended to read:

"53-7-109. Administration of vocational rehabilitation programs — applicability. (1) Those divisions of the department that have programs for the provision of vocational rehabilitation services may share administrative personnel, operations, and policies ~~so as to assure in order to ensure~~ uniform administration necessary under the federal Rehabilitation Act of 1973, {29 U.S.C. 701, et seq.}, as may be amended. ~~Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in section 15, Chapter 396, Laws of 1989.~~

(2) This section applies to all programs and services in Title 53, chapter 7, administered by the department with funds provided under the federal Rehabilitation Act of 1973, {29 U.S.C. 701, et seq.}, as may be amended."

Section 66. Section 61-3-403, MCA, is amended to read:

"61-3-403. Color and design of personalized license plates — exception — county designation. (1) Except as provided in 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination thereof ~~of numbers and letters~~, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide ~~nonremovable stickers~~ *registration decals* bearing

the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.”

Section 67. Section 61-3-522, MCA, is amended to read:

“61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	\$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older	65

(2) (a) Except as provided in subsection (2)(b), the age of a motor home is determined by subtracting the manufacturer’s designated model year from the current calendar year.

(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.”

Section 68. Section 61-3-722, MCA, is amended to read:

“61-3-722. Registration and identification of proportionally registered vehicles — fees — effect of registration. (1) The department shall register each proportionally registered vehicle and issue a license plate or plates, a distinctive ~~sticker~~ *registration decal*, or other suitable identification device for each vehicle described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, ~~stickers~~ *registration decals*, or devices issued. A fee of \$2 must be paid for each license plate, each ~~sticker~~ *registration decal*, and each device issued for each proportionally registered vehicle. A fee of \$5 must be paid for each vehicle receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted in April 1988. A registration card must be issued for each proportionally registered vehicle. The registration card must, in addition to other information required by chapter 3, show the number of the license, ~~sticker~~ *registration decal*, or other device issued for the proportionally registered vehicle and must be carried in the vehicle at all times.

(2) Fleet vehicles registered and identified as fleet vehicles are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.”

Section 69. Section 61-4-223, MCA, is amended to read:

“61-4-223. Assignment of numbers. (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in 61-4-222, furnish every qualified manufacturer's representative of that manufacturer with one set of number plates. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters “MFG”.

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer. The department shall provide ~~nonremovable stickers~~ *registration decals* bearing the appropriate county designation. The ~~stickers~~ *registration decals* must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer's representative who qualifies as provided in 61-4-221(1) may display manufacturer's license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer's business and operated by or under the control of the manufacturer's representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer's license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer's license.”

Section 70. Section 61-4-515, MCA, is amended to read:

“61-4-515. Arbitration procedure. (1) The department of administration shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an ~~arbitration panel~~ *arbitrator* only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure that has been certified by the department of administration under 61-4-511.”

Section 71. Section 61-4-520, MCA, is amended to read:

“61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department of administration ~~panel~~ *arbitrator*. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department of administration arbitration ~~panel~~ hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.”

Section 72. Section 61-8-906, MCA, is amended to read:

“61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

- (i) \$300,000 for class A tow trucks;
- (ii) \$500,000 for class B tow trucks; and
- (iii) \$750,000 for class C tow trucks;

(b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) *garage keepers legal liability insurance* or on-hook liability insurance in an amount not less than \$50,000.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission.

(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays;
- (d) large enough to store all the vehicles towed for law enforcement agencies; and
- (e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism.”

Section 73. Section 61-8-913, MCA, is amended to read:

“61-8-913. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of ownership title. (1) Within 15 days after the date that a wrecked or disabled vehicle is removed from a public roadway by a qualified tow truck operator at the request of a law enforcement officer under 61-8-908, the qualified tow truck operator shall send a certified letter to the vehicle owner or lienholder, as shown in the department’s records, notifying the owner or lienholder that the vehicle has been towed and is being stored by the qualified tow truck operator. The certified letter must be sent return receipt requested and postage prepaid to the owner or lienholder at the latest address shown in the department’s records.

(2) The owner or lienholder of the vehicle may not reclaim the vehicle until the owner, the lienholder, or the owner’s or lienholder’s insurance provider has paid the costs incurred by the qualified tow truck operator in removing and storing the vehicle.

(3) If the removal and storage costs have not been paid within 60 days after the date that the notice provided for in subsection (1) was postmarked, the qualified tow truck operator may request, on a form provided by the department, that the department cancel the vehicle’s certificate of ~~ownership~~ *title*, remove any perfected security interest, and reissue the certificate of

~~ownership title~~ to the qualified tow truck operator. In the request, the qualified tow truck operator shall certify that the notice required in subsection (1) was sent and that the owner or lienholder has not made payment as required in subsection (2). A copy of the notice required in subsection (1) must be attached to the request.

(4) Upon receipt of a valid request as provided in subsection (3), the department shall cancel the certificate of ~~ownership title~~ to the vehicle and reissue the certificate of ~~ownership title~~ to the qualified tow truck operator. The qualified tow truck operator shall pay all required fees on the vehicle. After the department has reissued the certificate of ~~ownership title~~, the former owner or lienholder has no further right, title, claim, or interest in or to the vehicle."

Section 74. Section 61-10-227, MCA, is amended to read:

"61-10-227. Blank forms furnished to county treasurers. The department shall furnish all county treasurers with the following:

- (1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of license required;
- (2) GVW licenses in a form determined most suitable by the department;
- (3) the other forms, ~~stickers~~ *registration decals*, certificates, or blanks *that* the department considers necessary to carry out this part."

Section 75. Section 61-10-233, MCA, is amended to read:

"61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and ~~payment~~ *registration* receipt issued under 61-3-322; or

(b) the gross vehicle weight ~~receipt~~ *license* issued under ~~61-10-227~~ *this part*.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of ~~his~~ *the* vehicle before unloading the excess, provided that it does not exceed the legal axle weight."

Section 76. Section 71-3-534, MCA, is amended to read:

"71-3-534. Filing with county clerk — notification of owner. (1) The county clerk ~~must~~ *shall* endorse upon every lien the day of its filing and make an abstract ~~thereof of the lien~~ in a book ~~by him~~ to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount ~~thereof of the lien~~, the name of the person against whose property the lien is filed, and the description of the property to be charged with ~~same the lien~~.

(2) The clerk ~~shall may~~ not file the lien unless ~~there is attached thereto~~ *it is accompanied by* a certification by the lien claimant or ~~his~~ *the claimant's* agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service ~~shall must~~ be made by personal service on each owner or by mailing a copy of the lien by certified ~~or registered~~ mail with return receipt requested to each owner's ~~last known~~ *last-known* address. The certification ~~shall must~~ state ~~whether that~~ service was made by delivery of certified ~~or registered~~ mail."

Section 77. Section 72-1-103, MCA, is amended to read:

“72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

(2) “Application” means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) “Beneficiary”, as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) “Beneficiary designation” refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) “Child” includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) “Claims”, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) “Clerk” or “clerk of court” means the clerk of the district court.

(8) “Conservator” means a person who is appointed by a court to manage the estate of a protected person.

(9) “Court” means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee ~~on~~ or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim

against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any

certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 78. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards and specifications for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, ~~shall~~ *must* be determined by the department and ~~shall~~ *must* be based

upon nationally recognized standards and specifications such as *the standards and specifications* that are published ~~from time to time~~ by the American society for testing and materials. When ~~so the standards and specifications are~~ determined by the department and adopted as rules, ~~such those~~ standards and specifications are the standards and specifications for ~~such~~ products sold in this state and official tests of ~~such the~~ products ~~shall must~~ be based upon ~~them the~~ *standards and specifications*.”

Section 79. Section 85-7-304, MCA, is amended to read:

“85-7-304. Sections not applicable. The provisions of 85-7-1911(1) and (2), 85-7-1934, 85-7-1935, 85-7-1941 through 85-7-1943, 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, ~~and 85-7-2032, and 85-7-2141~~ ~~shall have no application~~ do not apply to the organization of irrigation districts under this part.”

Section 80. Repealer. Sections 15-7-104, 15-32-108, 20-6-212, and 85-7-2141, MCA, are repealed.

Section 81. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 59th legislature.

Approved March 30, 2005

CHAPTER NO. 131

[SB 51]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO REVOKE A LICENSE FOR FAILURE TO ASSESS, REPORT, OR PAY ASSESSMENTS; REQUIRING COMMODITY DEALERS TO RETAIN AND MAINTAIN RECORDS FOR 5 YEARS; AMENDING SECTIONS 80-4-421 AND 80-4-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-421, MCA, is amended to read:

“80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a *commodity warehouse operator’s* or *commodity dealer’s* license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset requirements. In determining compliance with net asset requirements, the department may consider the licensee’s status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter; or

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) *failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.*

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631."

Section 2. Section 80-4-606, MCA, is amended to read:

"80-4-606. Inspection of premises, books, and records. (1) The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of ~~his~~ *the commodity dealer's* business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state, *including*

those pertaining to the collecting, reporting, and paying of authorized assessments pursuant to Title 80, chapter 4 or 11.

(2) A commodity dealer shall retain and maintain the records provided for in subsection (1) for a period of 5 years from the date of the transaction.

(3) If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.”

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [Section 2(2)] applies to transactions with a date after [the effective date of this act].

Approved March 30, 2005

CHAPTER NO. 132

[SB 57]

AN ACT PROHIBITING A STUDENT WHO IS ATTENDING A JOB CORPS PROGRAM FROM CLAIMING THE JOB CORPS FACILITY AS THE STUDENT'S RESIDENCE FOR EDUCATIONAL PURPOSES; AMENDING SECTIONS 20-5-322, 20-7-420, 20-9-707, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-322, MCA, is amended to read:

“20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, *except as provided in 20-9-707*, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.”

Section 2. Section 20-7-420, MCA, is amended to read:

“20-7-420. Residency requirements — financial responsibility for special education. (1) ~~In accordance with the provisions of 1-1-215 Except for a pupil attending a job corps program pursuant to 20-9-707, a child’s district of residence for special education purposes is the residence of the child’s parents or of the child’s guardian if the parents are deceased must be determined in accordance with the provisions of 1-1-215,~~ unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent’s last-known district of residence is the child’s district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children’s psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district’s costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.”

Section 3. Section 20-9-707, MCA, is amended to read:

“20-9-707. Agreement with accredited Montana job corps program.

(1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student’s district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student’s district of residence, must be taught by an instructor who has a current and appropriate

Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) *A student attending a job corps program may not claim the job corps program's facility as the student's residence for the purposes of this section.*

Section 4. Section 20-10-105, MCA, is amended to read:

"20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, *except as provided in 20-9-707*, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever a county is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes."

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 133

[SB 64]

AN ACT REVISING LAWS GOVERNING CONTRACTOR REGISTRATION; REVISING REGISTRATION AND FEE PROVISIONS FOR CONSTRUCTION CONTRACTORS; SPECIFYING DISPOSITION OF CONSTRUCTION CONTRACTOR AND INDEPENDENT CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-9-201, 39-9-206, 39-71-201, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-9-201, MCA, is amended to read:

"39-9-201. Registration required — application. (1) Each construction contractor shall register with the department.

(2) An applicant for registration as a construction contractor shall submit an application ~~under oath~~ on a form to be provided by the department that must include the following information:

- (a) the applicant's social security number;
- (b) proof of compliance with workers' compensation laws;
- (c) the I.R.S. employer identification number, if any; and
- (d) the name and address of:
 - (i) each partner if the applicant is a firm or partnership;
 - (ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.”

Section 2. Section 39-9-206, MCA, is amended to read:

“39-9-206. Fees — education program. (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) ~~changes~~ *change* of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees ~~shall~~ *must* cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed:

(a) \$70 for the initial registration certificate; or

(b) \$70 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue *fund in an* account to the credit of the department for the administration and enforcement of this chapter *and independent contractor certification provided for in Title 39, chapter 71, part 4.*

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption *certificate* may not exceed the *total* fee charged for a certificate of registration *and an independent contractor exemption certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may be used by the department to offset the cost of administering independent contractor certification provided for in Title 39, chapter 71, part 4.*

Section 3. Section 39-71-201, MCA, is amended to read:

“39-71-201. Administration fund. (1) A workers’ compensation administration fund is established out of which *are to be paid upon lawful appropriation* all costs of administering the Workers’ Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of ~~the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers’ fund, are to be paid upon lawful appropriation provided for in 39-71-503.~~ The department shall collect and deposit in the state treasury to the credit of the workers’ compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the *certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503*. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before

July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on of each succeeding April 30 year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of

\$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) ~~On or before April 30, 2001, and on of each succeeding April 30 year,~~ upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
 - (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but
 - (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
- (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);
- (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;
- (n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

~~(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.~~

(b) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 134

[SB 84]

AN ACT PROVIDING A PROCEDURE FOR FORFEITURE OF SEIZED EVIDENCE IN GAMBLING CASES; PROVIDING FOR PRIVATE VIDEO GAMBLING MACHINE TESTING FACILITIES TO BE LICENSED AS MANUFACTURERS; PROVIDING FOR PUBLIC DISPLAY OF ANTIQUE SLOT MACHINES; PROVIDING REMEDIES TO PURSUE VIOLATIONS BY A LICENSEE FOLLOWING THE EXPIRATION OF A LICENSE OR A PERMIT; PROVIDING FOR MULTIPLE WINNING PATTERNS FOR THE GAME OF BINGO; PROVIDING A DEFINITION OF A BONUS GAME TO BE PLAYED ON A VIDEO GAMBLING MACHINE; INCREASING THE TYPES OF POKER GAMES THAT MAY BE PLAYED ON A POKER MACHINE; PROVIDING RULEMAKING AUTHORITY FOR THE DISPLAY OF IMAGES AND SCREENS FOR VIDEO GAMBLING MACHINES; AMENDING SECTIONS 23-5-112, 23-5-113, 23-5-123, 23-5-152, 23-5-153, 23-5-412, 23-5-602, 23-5-621, AND 23-5-625, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Property subject to forfeiture. (1) The following property is subject to forfeiture:

(a) gambling implements, apparatus, paraphernalia, slips, tickets, and devices kept, possessed, or used in violation of a provision of this chapter;

(b) personal property not listed in subsection (1)(a), including but not limited to motor vehicles and money or negotiable instruments, kept, possessed, derived from, or used in violation of a provision of this chapter.

(2) Personal property is not subject to forfeiture unless the owner of the property had actual or constructive knowledge of and was a consenting party to the illegal act.

Section 2. Petition — summons — service — answer. (1) A peace officer that seizes personal property under [section 1] shall within 45 days of the seizure file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurred. The clerk shall issue a summons, which the petitioning party shall by one of the following methods serve upon each owner or claimant of the personal property:

(a) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the department.

(2) Within 20 days after service under subsection (1), the owner or claimant of the seized property may file a verified answer to the allegations concerning the use of the property described in the petition. An extension of time for filing the answer may not be granted. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

Section 3. Effect of failure to answer — hearing date following answer. (1) If a verified answer to the petition is not filed within 20 days after service under [section 2], the court, upon motion, shall order the property forfeited to the state.

(2) If a verified answer is filed within 20 days after service under [section 2], the forfeiture proceedings must be set for hearing without a jury, to be held no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service under [section 2].

Section 4. Rebuttable presumption of forfeiture — rebuttal of presumption. (1) There is a rebuttable presumption of forfeiture.

(2) An owner of the personal property who has a verified answer on file may rebut the presumption by proving that the property was not used for the purpose charged or that the use of the property occurred without the owner's knowledge or consent.

(3) A claimant of a security interest in the personal property who has a verified answer on file may preserve the security interest by proving that the security interest:

(a) is bona fide; and

(b) was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser of the personal property and without knowledge that the personal property was going to be or was used for the purpose charged.

(4) Subsection (3)(b) does not apply to:

(a) a person who has a lien for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage for or safekeeping of the personal property;

(b) a person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers; or

(c) a person regularly engaged in the business of selling or of purchasing conditional sales contracts for that type of personal property.

Section 5. Disposition of property. (1) If the court finds that the personal property was not used for the purpose charged or was used without the knowledge or consent of the owner, it shall order the property released to the owner.

(2) If the court finds that the personal property was used for the purpose charged and was used with the knowledge or consent of the owner, the personal property shall be disposed of as follows:

(a) If proper proof of a claim is presented at the hearing by the holder of a security interest, the court shall order the personal property released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the personal property as of the date of seizure. If the amount due the holder of the security interest is less than the value of the personal property, the personal property may be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution. The proceeds of the sale must be first used to pay the amount due to the holder of the security interest, with the remainder deposited in the account provided for in subsection (3). Instead of sale at public auction, the law enforcement agency may turn the personal property over to the holder of the security interest. The personal property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If there is no security interest claimant and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so. If the personal property is not retained, it must be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution and the proceeds of the sale must be deposited in the account provided for in subsection (3).

(c) If a security interest claimant has presented proper proof of a claim and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) Any forfeited negotiable instruments must be liquidated to cash. All forfeited cash and the proceeds of liquidated negotiable instruments must be deposited in a state special revenue account to the credit of the department of justice. The department may expend the money deposited in the account only for purposes of enforcement of gambling laws.

(4) In making a disposition of personal property, the court may take any action to protect the rights of innocent persons.

Section 6. Pursuing violation by or determining suitability for licensure of person whose license has expired. The expiration of a license or permit issued under this chapter does not prevent the department from pursuing a violation by the person holding the license or permit or from determining that person's suitability for a future license or permit.

Section 7. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking *any* money, credit, deposit, check, property, or ~~any~~ other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

~~(a)~~(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

~~(b)~~(ii) a promotional game of chance; or

~~(c)~~(iii) an amusement game regulated under *Title 23*, chapter 6 of this title.

(15) “Gross proceeds” means gross revenue received less prizes paid out.

(16) “Illegal gambling device” means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under *Title 23*, chapter 7, of this title or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) “Illegal gambling enterprise” means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in *Title 23*, chapter 4, of this title and parts 2, 5, and 8 of this chapter; and

(d) credit gambling.

(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(21) "Licensee" means a person who has received a license from the department.

(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(23) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under *Title 23*, chapter 7 of this title.

(24) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) *possesses gambling devices or components of gambling devices for the purpose of testing them.*

(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not

purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(33) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(34) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(35) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 8. Section 23-5-113, MCA, is amended to read:

"23-5-113. Department as criminal justice agency — seized property. (4) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by

parts 1 through 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

~~(2) Upon conviction for any violation of parts 1 through 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."~~

Section 9. Section 23-5-123, MCA, is amended to read:

"23-5-123. Disposal of money confiscated by reason of fines and penalties for violation of gambling laws. All fines, penalties, forfeitures, and confiscated money and penalties collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 8 of this chapter or a rule of the department must be deposited in the state general fund."

Section 10. Section 23-5-152, MCA, is amended to read:

"23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions. (1) Except as provided in 23-5-153 and subsections (2) through (5) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person's possession or under the person's control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person's management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state.

(b) A person may not manufacture an illegal gambling device without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(5) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.”

Section 11. Section 23-5-153, MCA, is amended to read:

“23-5-153. Possession and sale of antique slot machines. (1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine may be possessed or located for purposes of display only and not for operation:

(i) in ~~any~~ a public or private museum; or

(ii) ~~owned and operated by the state, a county, or a city~~ in any other public place if the machine has been made permanently inoperable for purposes of conducting a gambling activity.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique slot machines for purposes of commercially selling or otherwise supplying the machines.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is \$50 a year. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing a slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

(6) An antique slot machine may not be operated for any commercial or charitable purpose.”

Section 12. Section 23-5-412, MCA, is amended to read:

“23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents;

(b) a prize may not exceed the value of \$100 for each individual bingo game or keno card; and

(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) (a) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

~~(a)~~(i) no more than 50 cents is wagered on each combination of numbers; and

~~(b)~~(ii) a winning combination does not pay more than \$100.

(b) *A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:*

(i) no more than 50 cents is wagered on each bingo pattern; and

(ii) a winning pattern does not pay more than \$100.

(4) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(5) If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."

Section 13. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.

(3) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo, as defined by rules of the department. The machine uses a video display and microprocessors ~~in which~~ and, by the skill of the player, by chance, or by both, ~~allows the player may to~~ receive free games, *bonus games*, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) (a) "*Bonus game*" means a game other than bingo, poker, or keno that is offered as a prize for playing and achieving a win by playing bingo, poker, or keno. The term includes a game that allows a player to win free credits, free

games, or a multiplier of credits already won or to move to an accelerated pay table for the play of poker, bingo, or keno. A bonus game must make available to the player a display of the rules for the bonus game.

(b) The term does not include a game that allows the player to wager money or credits on the game or to lose money or credits already won. The term does not include a game by which the bonus game would become the predominant game rather than bingo, poker, or keno. The department shall by administrative rule define the conditions that would cause a bonus game to be the predominant game. The term does not include a game that displays or simulates a gambling activity that is not legal under state law.

~~(4) (a) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.~~

~~(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.~~

(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno, as defined by rules of the department. The machine uses a video display and microprocessors ~~in which~~ and, by the skill of the player, by chance, or by both, ~~allows the player may to~~ receive free games, *bonus games*, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(8) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department.

(9) (a) *"Poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, 5-card stud, 7-card stud, or hold 'em, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.*

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 14. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, *including a description of the images and the minimum area of a screen that depicts a bingo, poker, or keno game;*

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine approved for connection to the department's automated accounting and reporting system to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if:

(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system; or

(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system, but the system is unavailable for connection;

(e) allow, on an individual license basis, licensed machine owners and operators of machines connected to the department's automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and

(g) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's automated accounting and reporting system.

(2) The department's rules for an automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account;

(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a

determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.

(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.”

Section 15. Section 23-5-625, MCA, is amended to read:

“23-5-625. Video gambling machine manufacturer — license — fees — restrictions. (1) It is unlawful for any person to assemble, produce, *test*, or manufacture any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer’s license by the department. A licensed manufacturer may supply a video gambling machine only to another licensed manufacturer or to a licensed distributor, route operator, or operator.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of \$1,000 for the issuance or renewal of a video gambling machine manufacturer’s license.

(3) Except as provided in subsection (6), the department may charge the applicant an additional, one-time video gambling machine manufacturer’s license application processing fee. The application processing fee may not exceed the department’s actual costs for processing an application.

(4) All video gambling machine manufacturer’s licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive the application processing fee provided for in subsection (3) if the applicant is licensed as a distributor, route operator, or operator.”

Section 16. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [sections 1 through 6].

Section 17. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 135

[SB 98]

AN ACT CREATING THE MONTANA LAND INFORMATION ACT; STATING THE PURPOSES OF THE MONTANA LAND INFORMATION ACT; DEFINING CERTAIN TERMS; ESTABLISHING CERTAIN DUTIES FOR THE DEPARTMENT OF ADMINISTRATION REGARDING LAND INFORMATION; CREATING THE LAND INFORMATION ADVISORY COUNCIL AND DESCRIBING APPOINTMENTS, TERMS, VACANCIES, AND COMPENSATION OF COUNCIL MEMBERS; CREATING THE MONTANA LAND INFORMATION ACCOUNT AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNT; REQUIRING EACH COUNTY GOVERNING BODY TO CREATE A COUNTY LAND INFORMATION

ACCOUNT AND DESCRIBING THE PURPOSES AND ALLOWABLE USES OF THE ACCOUNT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO ADMINISTER THE MONTANA LAND INFORMATION ACT; REVISING CERTAIN FEES CHARGED FOR RECORDING CERTAIN DOCUMENTS AND REVISING THE DISTRIBUTION OF THE FEES COLLECTED; AMENDING SECTIONS 7-4-2632 AND 7-4-2637, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the “Montana Land Information Act”.

Section 2. Purpose. The purpose of [sections 1 through 10] is to develop a standardized, sustainable method to collect, maintain, and disseminate information in digital formats about the natural and artificial land characteristics of Montana. Land information changes continuously and is needed by businesses, citizens, governmental entities, and others in digital formats to be most effective and productive. [Sections 1 through 10] will ensure that digital land information is collected consistently, maintained accurately in accordance with standards, and made available in common ways for all potential uses and users, both private and public. [Sections 1 through 10] prioritize consistent collection, accurate maintenance, and common availability of land information to provide needed, standardized, and uniform land information in digital formats.

Section 3. Definitions. As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) “Account” means the Montana land information account created in [section 7].

(2) “Council” means the land information advisory council established in [section 5].

(3) “Department” means the department of administration provided for in 2-15-1001.

(4) “Digital format” means information that is scanned, electronically drawn, layered through the GIS, or digitized by other electronic methods.

(5) “Geographic information system” or “GIS” means an organized collection of computer hardware, software, land information, and other resources, including personnel, that is designed to or assists to efficiently collect, maintain, and disseminate all forms of geographically referenced information.

(6) “Land information” means data that describes the geographic location and characteristics of natural or constructed features and boundaries within or pertaining to Montana.

Section 4. Land information — management — duties of department. (1) The department shall:

(a) serve as the administrator of the account;

(b) work with all federal, state, local, private, and tribal entities to develop and maintain land information;

(c) annually develop a land information plan that describes the priority needs to collect, maintain, and disseminate land information. The land information plan must have as a component a proposed budget designed to accomplish the goals and objectives of the plan.

(d) present the land information plan to the council for review and endorsement;

(e) establish, by administrative rule, an application process and a granting process that must be used to distribute funds in the account. The granting process must give preference to interagency or intergovernmental grant requests whenever multiple state agencies, local governments or agencies, or Indian tribal governments or tribal entities have partnered together to meet a requirement of the land information plan.

(f) review all grant applications from state agencies, local governments or agencies, and Indian tribal governments or tribal entities for the purpose of implementing the land information plan;

(g) monitor the use of grant funds distributed to a state agency, a local government or agency, or an Indian tribal government or tribal entity or to any combination of state, local, and Indian tribal governments or entities to ensure that the use of the funds complies with the purposes of [sections 1 through 10];

(h) coordinate the development of technological standards for creating land information;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the department's responsibilities described in this section; and

(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information.

(2) To fulfill the responsibilities described in subsection (1), the department or any recipient of funds granted pursuant to [sections 1 through 10] may contract with a public or private entity.

Section 5. Land information advisory council — appointments — terms — vacancies — compensation. (1) There is a land information advisory council.

(2) The council is composed of the following members:

(a) the director of the department or the director's designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council.

(b) the state librarian or the state librarian's designee;

(c) to be appointed by the governor:

(i) the directors of four other departments established in Title 2, chapter 15. A director may designate a person to act in the director's absence.

(ii) three persons who represent county or municipal government, at least one of whom is active in land information systems;

(iii) two persons who are employed by the U.S. department of agriculture;

(iv) two persons who are employed by the U.S. department of the interior;

(v) two persons who are active in land information systems and represent public utilities or private businesses;

(vi) one person who represents Indian tribal interests;

(vii) one person who represents the Montana university system;

(viii) two persons who are members of a Montana association of GIS professionals; and

(ix) one person who represents the interests of a Montana association of registered land surveyors;

(d) one member of the Montana state senate, appointed by the committee on committees, who must be appointed prior to the appointment of the member described in subsection (2)(e); and

(e) one member of the Montana house of representatives, appointed by the speaker of the house of representatives, who may not be a member of the same political party as the member of the senate appointed under subsection (2)(d).

(3) Each council member is appointed for a 2-year term that begins on July 1 of the odd-numbered year and ends on June 30 of the succeeding odd-numbered year. A member may be reappointed to the council.

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not a legislator or an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated, as provided in 2-15-124.

(b) A member of the council who is not a legislator but is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses, as provided in 2-18-501 through 2-18-503.

(c) A legislator who is a member of the council is eligible to be compensated and reimbursed, as provided in 5-2-302.

Section 6. Land information advisory council — duties — advisory only. (1) The council shall:

(a) advise the department with regard to issues relating to the geographic information system and land information;

(b) advise the department on the priority of land information, including data layers, to be developed;

(c) review the land information plan described in [section 4] and advise the department on any element of the plan;

(d) advise the department on the development and management of the granting process described in [section 4(1)(e)];

(e) advise the department on the management of and the distribution of funds in the account;

(f) assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and Indian tribal government entities to provide development of and maintenance of services relating to the GIS and land information;

(g) promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of land information; and

(h) advocate for the development of consistent policies, standards, and guidelines for land information.

(2) The council functions in an advisory capacity, as defined in 2-15-102.

Section 7. Montana land information account. (1) There is established in the state special revenue fund a Montana land information account.

(2) All money received by the department of revenue pursuant to 7-4-2637(3)(a)(iii) must be deposited in the account.

(3) Funds in the account must be invested pursuant to Title 17, chapter 6, part 2. All interest and income earned on funds in the account accrue to and must be deposited in the account.

Section 8. Montana land information account — distribution of funds. (1) The department shall annually prepare a budget to carry out the department's responsibilities described in [section 4]. Money in the account may be used to fund all or a portion of the budget or to otherwise accomplish the purposes of [sections 1 through 10].

(2) A state agency, a local government, or an Indian tribal government entity may apply to the department for funds in the account for the purposes described in [sections 1 through 10].

(3) The department shall ensure that funds distributed under this section are managed by the recipient of the funds according to standards and practices established by the department to allow for the greatest use and sharing of the land information.

Section 9. Montana land information account — use of funds — action by department — hearing. (1) Money in the account may be used only for the purposes of [sections 1 through 10], including purchasing technology to assist in collecting, maintaining, or disseminating land information and funding the budget required under [section 8].

(2) If the department determines that a recipient of funds from the account has not used or is not using funds in the manner prescribed by the department, the department may, after notice and hearing as provided for in Title 2, chapter 4, suspend further payment to the recipient.

(3) A recipient to whom the department has suspended payments under this section is not eligible to receive further funds from the account until the department determines that the recipient is using funds in the manner prescribed by the department.

Section 10. Rulemaking. (1) The department shall adopt rules regarding:

(a) designing and implementing the process to develop the land information plan described in [section 4(1)(c)];

(b) the application and granting processes provided for in [section 4(1)(e)];

(c) the monitoring process provided for in [section 4(1)(g)]; and

(d) the process for coordinating technological standards for creating land information provided for in [section 4(1)(h)].

(2) The department may adopt other rules considered to be necessary for the effective administration of [sections 1 through 10].

Section 11. County land information account — creation — purposes — uses. (1) The governing board of each county shall establish a county land information account.

(2) The governing body of each county is responsible for deposits to and expenditures from the account.

(3) Subject to the provisions of subsection (4), a county may use the funds in the county land information account:

(a) for local geographic information system projects to meet the local operations needs of the county or a municipality within the county;

(b) for local land information data collection, maintenance, and dissemination projects;

(c) for intergovernmental or interagency geographic information system and land information data collection, maintenance, or dissemination projects with any other county, city, state, federal, or Indian tribal agency; or

(d) as matching funds for other state, federal, private, or other fund sources to accomplish the purposes of this section.

(4) (a) Except as provided in subsection (4)(b), use of funds in the county land information accounts must comply with applicable, existing state standards for the geographic information system and land information.

(b) A county may, upon approval of the county governing board, use funds in the county land information account for projects that collect, maintain, disseminate, or otherwise use the geographic information system or land information for which state standards do not exist.

(5) Funds deposited to and expended from the county land information account are subject to audit pursuant to Title 2, chapter 7, part 5.

Section 12. Section 7-4-2632, MCA, is amended to read:

“7-4-2632. Fee when recording done by mechanical means. *Where Whenever* recording is done by a photographic or similar process, the county clerk and recorder shall charge ~~\$6~~ \$7 for each page or fraction of a page of the instrument for recording.”

Section 13. Section 7-4-2637, MCA, is amended to read:

“7-4-2637. (Effective July 1, 2005) Fees for recording standard documents. (1) Except as provided in 7-4-2631 and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is ~~\$6~~ \$7 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of 7-4-2636 is ~~\$10~~ \$11 for each page or fraction of a page for the first five pages or fractions of the pages and ~~\$6~~ \$7 for each subsequent page.

(3) (a) Of the fees collected under subsection (1);:

(i) \$1 must be deposited in the records preservation fund, provided for in 7-4-2635;:

(ii) 25 cents must be deposited in the county land information account provided for in [section 11];

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit to the Montana land information account created in [section 7]; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each ~~\$6~~ \$7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining \$4 of each ~~\$10~~ \$11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each \$4 amount from ~~a \$10 an~~ \$11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.”

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 15. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90 apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 7, chapter 6, part 22, and the provisions of Title 7, chapter 6, apply to [section 11].

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 136

[SB 117]

AN ACT REVISING MORTGAGE BROKER LAWS; MODIFYING THE DEFINITION OF “MORTGAGE BROKER” TO INCLUDE A PERSON WHO LOANS MONEY THAT IS NOT SECURED BY PROPERTY PURCHASED WITH THE LOAN PROCEEDS; INCREASING FROM 5 PERCENT TO 10 PERCENT THE OWNERSHIP INTEREST IN A MORTGAGE BROKER ENTITY A PERSON MUST HAVE BEFORE THAT OWNERSHIP INTEREST MUST BE REPORTED TO THE DEPARTMENT OF ADMINISTRATION; REVISING INFORMATION INCLUDED IN ADVERTISING; AUTHORIZING THE DEPARTMENT TO SHARE INFORMATION WITH OTHER STATE REGULATORY AGENCIES AND THE MORTGAGE ASSET RESEARCH INSTITUTE, INC., AND OTHER SIMILAR ORGANIZATIONS; AND AMENDING SECTIONS 32-9-103, 32-9-115, 32-9-121, AND 32-9-130, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-103, MCA, is amended to read:

“32-9-103. Definitions. As used in this part, the following definitions apply:

(1) “Bona fide third party” means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) “Borrower” means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) “Department” means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

(5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker services.

(6) "Lender" means an entity that funds or services a residential mortgage loan.

(7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

(8) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

(10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families ~~located on real property purchased by the borrower with the loan provided by the lender.~~

(11) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

(12) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees."

Section 2. Section 32-9-115, MCA, is amended to read:

"32-9-115. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed location of the business, with a photograph of each location at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations.

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns ~~5%~~ 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by 32-9-123;

(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and

(e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings."

Section 3. Section 32-9-121, MCA, is amended to read:

"32-9-121. In-state office requirement — records maintenance — advertising requirement. (1) A person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) ~~(a) A licensee or licensed entity shall disclose in~~ *In any printed, published, televised, e-mail, or internet advertisement for the provision of services, the following information must be included:*

(i) a name, address, and license number for each mortgage broker or loan originator advertising as an individual; or

(ii) the name and address of the licensee and the number designated on the license issued to the licensee or licensed entity by the department the name, address, and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card

must include a mortgage broker's or loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 4. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

- (a) revocation or suspension of licenses for cause;
- (b) investigation of applicants and licensees and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) prescribing forms for applications;
- (d) developing or approving tests to be given as a prerequisite for licensure;
- (e) approval of programs for continuing education; and
- (f) establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may:

(i) exchange information with federal *and state* regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor; *and*

(ii) *exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations.*

(b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers."

Approved March 30, 2005

CHAPTER NO. 137

[SB 166]

AN ACT REVISING METHAMPHETAMINE ENFORCEMENT LAWS; MAKING THEFT OF ANY AMOUNT OF ANHYDROUS AMMONIA FOR THE PURPOSE OF MANUFACTURING DANGEROUS DRUGS A FELONY; PROVIDING THAT POSSESSION OF ANHYDROUS AMMONIA WITH INTENT TO MANUFACTURE DANGEROUS DRUGS IS CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AMENDING SECTIONS 45-6-301, 45-9-107, AND 45-9-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-301, MCA, is amended to read:

“45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

- (a) a knowingly false statement, representation, or impersonation; or
- (b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) ~~A~~ *Except as provided in subsection (8)(b),* a person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value, ~~or~~ theft of any commonly domesticated hoofed animal, *or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs* shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 2. Section 45-9-107, MCA, is amended to read:

"45-9-107. Criminal possession of precursors to dangerous drugs. (1)

A person commits the offense of criminal possession of precursors to dangerous drugs if:

(a) the person possesses any material, compound, mixture, or preparation that contains any combination of the following with intent to manufacture dangerous drugs:

- ~~(a)~~(i) phenyl-2-propanone (phenylacetone);
- ~~(b)~~(ii) piperidine in conjunction with cyclohexanone;
- ~~(c)~~(iii) ephedrine;
- ~~(d)~~(iv) lead acetate;
- ~~(e)~~(v) methylamine;

- ~~(f)~~(vi) methylformamide;
- ~~(g)~~(vii) n-methylephedrine;
- ~~(h)~~(viii) phenylpropanolamine;
- ~~(i)~~(ix) pseudoephedrine;
- ~~(j)~~(x) anhydrous ammonia;
- ~~(k)~~(xi) hydriodic acid;
- ~~(l)~~(xii) red phosphorus;
- ~~(m)~~(xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;
- ~~(n)~~(xiv) lithium in conjunction with anhydrous ammonia; *or*
- (b) *the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.*

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed \$50,000, or both."

Section 3. Section 45-9-131, MCA, is amended to read:

"45-9-131. Definitions. As used in 45-9-132 and this section, the following definitions apply:

(1) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. "Booby trap" includes:

- (a) guns, ammunition, or explosive devices that are attached to trip wires or other triggering mechanisms;
- (b) sharpened stakes, nails, spikes, electrical devices, lines, or wires with hooks attached; and
- (c) devices for the production of toxic fumes or gases.

(2) "Equipment" or "laboratory equipment" means all products, components, or materials of any kind when used, intended for use, or designed for use in the manufacture, preparation, production, compounding, conversion, or processing of a dangerous drug as defined in 50-32-101. Equipment or laboratory equipment includes but is not limited to:

- (a) a reaction vessel;
- (b) a separatory funnel or its equivalent;
- (c) a glass condensor;
- (d) an analytical balance or scale; or
- (e) a heating mantle or other heat source.

(3) "Precursor to dangerous drugs" means ~~any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1), except as exempted by 45-9-108, any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1)(a) or anhydrous ammonia knowingly possessed for the purpose of manufacturing dangerous drugs.~~

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 138

[SB 170]

AN ACT PROVIDING FLEXIBILITY TO SCHOOL DISTRICTS IN SETTING THEIR SCHOOL CALENDARS BY ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT CONDUCT AT LEAST 180 SCHOOL DAYS DURING EACH SCHOOL FISCAL YEAR; DEFINING "MINIMUM AGGREGATE HOURS"; REQUIRING A SCHOOL DISTRICT TO CONDUCT SCHOOL FOR A MINIMUM NUMBER OF AGGREGATE HOURS EACH SCHOOL YEAR; REQUIRING SCHOOL DISTRICT TRUSTEES TO SET THE LENGTH OF THE SCHOOL TERM, SCHOOL DAY, AND SCHOOL WEEK; MAKING THE REVISIONS NECESSARY TO REFLECT THE ELIMINATION OF THE REQUIREMENT FOR 180 SCHOOL DAYS; AMENDING SECTIONS 2-2-302, 20-1-101, 20-1-301, 20-1-302, 20-1-304, 20-2-115, 20-2-121, 20-3-324, 20-5-109, 20-6-209, 20-9-311, 20-9-801, 20-9-802, 20-9-805, AND 20-9-806, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-302, MCA, is amended to read:

"2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

- (a) a sheriff in the appointment of a person as a cook or an attendant;
- (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
- (c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days *as defined by the trustees in 20-1-302*;
- (d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

- (e) the employment of election judges; or
- (f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

Section 2. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(2) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(9) (a) *"Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.*

(b) *The term does not include lunch time and periods of unstructured recess.*

~~(9)~~(10) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed

by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

~~(12)~~(13) "Regents" means the board of regents of higher education.

~~(13)~~(14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(16) "State university" means Montana state university-Bozeman.

~~(16)~~(17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(18) "System" means the Montana university system.

~~(18)~~(19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(22) "Trustees" means the governing board of a district.

~~(22)~~(23) "University" means the university of Montana-Missoula.

~~(23)~~(24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 3. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least 180 school days of pupil instruction and the

minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that ~~175 days and~~ 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient or a minimum of ~~90 days and~~ 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117.

(2) The minimum aggregate hours required by grade are:

(a) 720 hours for grades 1 through 3; and

(b) 1,080 hours for grades 4 through 12.

~~(3) To calculate the number of equivalent school days of pupil instruction when providing less than the minimum number of hours of instruction provided in subsections (1) and (2), a school district shall:~~

~~(a) determine the aggregate hours of pupil instruction by grade level;~~

~~(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and~~

~~(c) round the result down to the nearest whole number.~~

~~(4)(3) For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction and the minimum aggregate hours, as defined listed in subsections (1) and (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by 1/90th for each school day less than 180 school days as calculated in subsection (3) or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed."~~

Section 4. Section 20-1-302, MCA, is amended to read:

"20-1-302. School term, day, and week. (1) Subject to 20-1-301, 20-1-308, and any applicable collective bargaining agreement covering the employment of affected employees, a school day of pupil instruction must be at least 2 hours for kindergartens, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in 1 school day may be reduced at the discretion of the trustees if the total number of pupil instruction hours in the school year is not less than the minimum aggregate hours required in 20-1-301 the trustees of a school district shall set the number of days in a school term, the length of the school day, and the number of school days in a school week and report them to the superintendent of public instruction.

(2) When proposing to adopt changes to a previously adopted school term, school week, or school day, the trustees shall:

(a) negotiate the changes with the recognized collective bargaining unit representing the employees affected by the changes;

(b) solicit input from the employees affected by the changes but not represented by a collective bargaining agreement; and

(c) solicit input from the people who live within the boundaries of the school district."

Section 5. Section 20-1-304, MCA, is amended to read:

"20-1-304. Pupil-instruction-related day. A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A

maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the ~~required minimum of 180 days or the required minimum aggregate hours of pupil instruction.~~

Section 6. Section 20-2-115, MCA, is amended to read:

“20-2-115. Rules with substantial financial impact — fiscal note — effect without funding. (1) When developing rules, policies, and standards under 20-2-121~~(6)(5), (7) (6), (9) (8), and (11) (10)~~, the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not implement the rule until July 1 following the next regular legislative session and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the BASE funding program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be implemented at any time.”

Section 7. Section 20-2-121, MCA, is amended to read:

“20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

~~(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;~~

(6)(5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for ~~such~~ *those* days in accordance with the provisions of 20-1-303 and 20-1-304;

~~(7)~~(6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8)(7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

~~(9)~~(8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

~~(10)~~(9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

~~(11)~~(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

~~(12)~~(11) adopt rules for student assessment in the public schools; and

~~(13)~~(12) perform any other duty prescribed from time to time by this title or any other act of the legislature.”

Section 8. Section 20-3-324, MCA, is amended to read:

“20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers’ retirement system of the state of Montana in accordance with the provisions of the teachers’ retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts

for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

~~(17)~~(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

~~(18)~~(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

~~(19)~~(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20)(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21)(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

~~(22)~~(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

~~(23)~~(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

~~(24)~~(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

~~(25)~~(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

~~(26)~~(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

~~(27)~~(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

~~(28)~~(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

~~(29)~~(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 9. Section 20-5-109, MCA, is amended to read:

"20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school ~~shall~~:

(1) *shall* maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) *shall* provide at least ~~180 days~~ *the minimum aggregate hours* of pupil instruction ~~or the equivalent~~ in accordance with 20-1-301 and 20-1-302;

(3) *must* be housed in a building that complies with applicable local health and safety regulations;

(4) *shall* provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, *shall* notify the county superintendent of schools; of the county in which the home school is located; in each school fiscal year of the student's attendance at the school."

Section 10. Section 20-6-209, MCA, is amended to read:

"20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least ~~180 days~~ *the minimum aggregate hours* under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of ~~days~~ *aggregate hours* as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for ~~180 days~~ *the minimum aggregate hours* or a lesser number of ~~days~~ *aggregate hours* than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order."

Section 11. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of ~~the pupil-instruction 180~~ and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than ~~180 school days~~ *the minimum aggregate hours* under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time

pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

- (A) 75% of the basic entitlement for the fourth year;
- (B) 50% of the basic entitlement for the fifth year; and
- (C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent."

Section 12. Section 20-9-801, MCA, is amended to read:

"20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days and the minimum aggregate hours by grade required by 20-1-301 by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted."

Section 13. Section 20-9-802, MCA, is amended to read:

“20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Declaration of emergency” means a declaration by a board of trustees that an unforeseen emergency has occurred in the district.

(2) “Reasonable effort” means the rescheduling or extension of the school district’s instructional calendar in an effort to attain the minimum ~~number of school days~~ *aggregate hours* required by law by:

(a) extending the school year ~~3 days~~ *12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades* and or the equivalent aggregate hours of pupil instruction beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) “School day” means the school day ~~defined in~~ *set by the trustees as provided in 20-1-302.*

(4) “Unforeseen emergency” means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or a combination of the foregoing that acts as a principal cause for a school district’s inability to conduct 1 or more scheduled school days.”

Section 14. Section 20-9-805, MCA, is amended to read:

“20-9-805. Rate of reduction in annual apportionment entitlement.

(1) ~~For~~ *Except as provided in 20-9-806(2), for each school-day hour* short of the minimum number of ~~school days~~ *aggregate hours* required by law that a school district fails to conduct by reason of one or more unforeseen emergencies ~~as defined in 20-9-802~~, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by ~~1/180th~~ *a proportionate amount.*

(2) Kindergarten, *grade 1 through 3*, and grade ~~1~~ *4* through 12 programs ~~shall must~~ be considered separately for the purpose of computing compliance with minimum ~~school-day~~ *aggregate hour* requirements and any loss of apportionment.”

Section 15. Section 20-9-806, MCA, is amended to read:

“20-9-806. School closure by declaration of emergency. (1) (a) If

Except as provided in subsection (2), if a school is closed by reason of an unforeseen emergency that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution, the pupil-instruction time lost during the closure need not be rescheduled to meet the minimum requirement for ~~pupil-instruction days~~ *aggregate hours* that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

~~(2)(b)~~ At least 3 school days or the equivalent aggregate hours must have been made up before the trustees can declare that a reasonable effort has been made.

(2) *The board of trustees may close school for 1 school day each school year because of an unforeseen emergency and may not be required to reschedule the pupil-instruction time lost because of the unforeseen emergency.”*

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 139

[SB 171]

AN ACT AUTHORIZING THE PRESIDENTS OF THE UNITS OF THE UNIVERSITY SYSTEM TO OFFER MULTIYEAR CONTRACTS TO ATHLETIC COACHES; AND AMENDING SECTIONS 20-25-305 AND 28-2-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-305, MCA, is amended to read:

“20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system ~~shall~~:

(1) ~~have~~ *is responsible for* the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) ~~be~~ *is* the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) ~~have~~ *has* the duties of one of the professorships as long as the interests of the unit require it;

(4) *shall* perform the duties of corresponding secretary for the unit;

(5) *may offer multiyear contracts to athletic coaches;*

~~(5)~~(6) *shall* make an annual report to the regents containing ~~such~~ *any* information ~~as~~ *that* they may request; and

~~(6)~~(7) *shall* furnish any special report on request of the regents or the legislature.”

Section 2. Section 28-2-722, MCA, is amended to read:

“28-2-722. Contracts for personal services limited to two years — exception. ~~A~~ *Except as provided in 20-25-305, a contract to render provide* personal services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it, ~~but if the contract.~~ *If the* employee voluntarily continues ~~his~~ service under ~~it the contract~~ beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.”

Approved March 30, 2005

CHAPTER NO. 140

[SB 188]

AN ACT DISTINGUISHING CLAIMS ADJUSTERS UNDER THE MONTANA INSURANCE CODE FROM CLAIMS EXAMINERS UNDER THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; EXEMPTING CLAIMS EXAMINERS FROM THE LICENSURE REQUIREMENTS OF

TITLE 33; DEFINING "CLAIMS EXAMINER" FOR PURPOSES OF THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 33-17-102, 39-71-107, 39-71-116, 39-71-225, 39-71-307, AND 39-72-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; ~~or~~

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; *or*

(v) *claims examiner as defined in 39-71-116.*

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(7) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(8) "Individual" means a natural person.

(9) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(12) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(13) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(14) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(18) "Person" means an individual or a business entity.

(19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

(23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 2. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act and the Occupational Disease Act of Montana must be ~~adjusted~~ *examined* by a ~~person~~ *claims examiner* in Montana. For a claim to be considered as ~~adjusted~~ *examined* by a ~~person~~ *claims examiner* in Montana, the ~~person-adjusting~~ *claims examiner* examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and ~~adjust~~ *examine* Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the ~~person-adjusting~~ *claims examiner* examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the

department. Settled claim files stored outside of the ~~adjuster's~~ *claims examiner's* office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(7) The department may adopt rules to implement this section.

(8) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full. The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 3. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) (a) *"Claims examiner" means an individual who, as a paid employee of the department, of a plan 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapters 71 and 72 to:*

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

~~(9)(10)~~ (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(10)(11)~~ "Days" means calendar days, unless otherwise specified.

~~(11)(12)~~ "Department" means the department of labor and industry.

~~(12)(13)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(13)~~(14) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, ~~but~~

(b) *The term* does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(14)~~(15) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(15)~~(16) "Invalid" means one who is physically or mentally incapacitated.

~~(16)~~(17) "Limited liability company" is as defined in 35-8-102.

~~(17)~~(18) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(18)~~(19) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(19)~~(20) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)~~(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(21)~~(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(23)~~(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

- (a) has a permanent impairment established by objective medical findings;
- (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and
- (c) has an actual wage loss as a result of the injury.

~~(24)~~(25) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(25)~~(26) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

~~(26)~~(27) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(28) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

~~(28)~~(29) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(29)~~(30) “Reasonably safe tools and appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(30)~~(31) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(30)~~ (31), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education, work history, and other factors that affect the worker’s ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(31)~~(32) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(32)~~(33) “Temporary partial disability” means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(33)~~(34) “Temporary service contractor” means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client’s workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(34)~~(35) “Temporary total disability” means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(35)~~(36) “Temporary worker” means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting

from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(36)~~(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(36)(a)~~ (37)(a) through ~~(36)(e)~~ (37)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(38) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(38)~~(39) "Year", unless otherwise specified, means calendar year."

Section 4. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, ~~adjusters~~ *claims examiners*, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and ~~claim adjuster~~ *claims examiner* on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) ~~Beginning July 1, 2000, an~~ An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 5. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer and every insurer is required to file with the

department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or ~~adjuster~~ *claims examiner* who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules."

Section 6. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "*Claims examiner*" is as defined in 39-71-116.

~~(3)~~(4) "Department" means the department of labor and industry.

~~(4)~~(5) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

~~(5)~~(6) "Employee" is as defined in 39-71-118.

~~(6)~~(7) "Employer" is as defined in 39-71-117.

(7)(8) "Independent contractor" is as defined in 39-71-120.

~~(8)~~(9) "Insurer" is as defined in 39-71-116.

~~(9)~~(10) "Invalid" is as defined in 39-71-116.

~~(10)~~(11) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

~~(11)~~(12) "Order" is as defined in 39-71-116.

~~(12)~~(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

~~(13)~~(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs,

causing the characteristic x-ray pattern, and by other variable clinical manifestations.

~~(14)~~(15) "Wages" is as defined in 39-71-123.

~~(15)~~(16) "Year" is as defined in 39-71-116."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 141

[SB 189]

AN ACT CLARIFYING THAT THE IMPAIRMENT MEDICAL EVALUATION PROCEDURES FOR WORKERS' COMPENSATION APPLY TO IMPAIRMENT RATING DISPUTES; AMENDING SECTIONS 39-71-605 AND 39-71-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the

determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."~~

Section 2. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are ~~not~~ subject to *the provisions of* 39-71-605."

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to impairment evaluations completed on or after [the effective date of this act].

Approved March 30, 2005

CHAPTER NO. 142

[SB 235]

AN ACT MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION SUBSTATIONS, SWITCH YARDS, VOLTAGE SUPPORT, OR OTHER CONTROL EQUIPMENT AND UPGRADING TRANSMISSION LINES WITHIN AN EXISTING RIGHT-OF-WAY; DEFINING THE TERM "UPGRADE"; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

“75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Addition thereto” means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) “Application” means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) “Associated facilities” includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, ~~transmission substations~~, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility; ~~except that the~~.

(b) *The term does not include a transmission substation, a switch yard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.*

(4) “Board” means the board of environmental review provided for in 2-15-3502.

(5) “Certificate” means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) “Commence to construct” means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) “Department” means the department of environmental quality provided for in 2-15-3501.

(8) “Facility” means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline; ~~and~~

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) *does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and*

(v) *does not include a transmission substation, a switch yard, voltage support, or other control equipment;*

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "*Upgrade*" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) *installing larger conductors;*

(b) *replacing insulators;*

(c) *replacing pole or tower structures; or*

(d) *changing structure spacing, design, or guying.*

(11)(12) “Utility” means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 143

[SB 243]

AN ACT PROVIDING THAT A BEER WHOLESALER MAY HAVE MORE THAN ONE SUBWAREHOUSE; PROVIDING THAT A BEER WHOLESALER THAT IS ALSO A LICENSED TABLE WINE DISTRIBUTOR MAY STORE WINE IN ANY WAREHOUSE OR SUBWAREHOUSE OF THE BEER WHOLESALER; AMENDING SECTION 16-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-103, MCA, is amended to read:

“16-4-103. Wholesalers’ licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse — wine storage. (1) Any person desiring to sell and distribute beer as a wholesaler ~~under the provisions of this code~~ shall apply to the department for a license ~~to do so~~ and tender with ~~his~~ *the* application the *required* license fee. ~~provided for, and the~~ *The* department is ~~hereby empowered, authorized, and directed to~~ *shall* issue wholesale licenses to qualified applicants in accordance with the provisions of this code. ~~Such~~ *A* license ~~shall must be at all times~~ *shall* be prominently displayed *at all times* in the place of business of ~~such~~ *the* wholesaler.

(2) An applicant shall ~~have~~ *maintain* a fixed place of business, sufficient capital, ~~and~~ the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license ~~shall must be~~ issued for ~~his~~ *the* wholesaler’s principal place of business in Montana. ~~A duplicate license~~ *Duplicate licenses* may be issued for ~~one subwarehouse only~~ *the wholesaler’s subwarehouses*; in Montana, ~~for each wholesale licensee~~. The duplicate license ~~shall at all times~~ *must be* prominently displayed *at all times* at ~~said subwarehouse~~ *the subwarehouses*.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(4) *A wholesaler that is also licensed as a table wine distributor may store wine in any of the wholesaler’s warehouses or subwarehouses.*

~~(4)(5)~~ (5) As used in subsection (1), “distribute” has the meaning ~~given to it~~ *provided* in 16-3-218.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 144

[SB 356]

AN ACT ELIMINATING THE PUBLIC SERVICE COMMISSION'S 90-DAY PERIOD FOR WITHHOLDING RECORDS AND REPORTS FROM THE PUBLIC; EXPANDING THE SCOPE OF PROTECTIVE ORDERS TO INCLUDE INFORMATION THAT MUST BE PROTECTED UNDER LAW; AND AMENDING SECTION 69-3-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-105, MCA, is amended to read:

"69-3-105. Access to commission records and reports — protective order. (1) Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times during regular business hours, as defined in 2-16-117, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.

(2) The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, or other information that must be protected under law, as required to carry out its regulatory functions."

Approved March 30, 2005

CHAPTER NO. 145

[SB 16]

AN ACT PROHIBITING THE USE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS FEATURING A CANDIDATE FOR OFFICE; AND AMENDING SECTION 2-2-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either

has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

~~(4)~~(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

~~(5)~~(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

~~(6)~~(7) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

~~(7)~~(8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8)(9) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Approved March 30, 2005

CHAPTER NO. 146

[SB 187]

AN ACT PROVIDING THAT UNDER THE TERMS OF THE JOINT AGREEMENT BETWEEN THE STATE AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES, JUDGMENTS FOR FISH AND GAME VIOLATIONS IN CONFEDERATED SALISH AND KOOTENAI TRIBAL COURTS ARE ENTITLED TO FULL FAITH AND CREDIT IN MONTANA COURTS; AMENDING SECTION 87-1-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-228, MCA, is amended to read:

"87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the tribes have certain rights to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving hunting and fishing. Therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;

(b) doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish off reservation on open and unclaimed lands, to be issued without charge to the Indians, or allowing Indians to hunt without licenses, permits, or stamps;

(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state. These joint licensing and permit requirements supersede the general licensing and permit requirements set forth in this title.

(d) authorizing all ~~revenues~~ *revenue* collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;

(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;

(f) policing Indian and other lands for the protection of fish and game and providing responsibility for redress of fish and game violations to state or tribal courts; and

(g) in general carrying out the purposes of this section.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

(3) *Any tribal court judgment for a fish and game violation arising out of an agreement under this section is entitled to full faith and credit in the courts of Montana.*

~~(3)~~(4) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement.”

Section 2. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Confederated Salish and Kootenai tribal government.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 147

[HB 16]

AN ACT INCREASING THE PER STUDENT DISTRIBUTION LIMIT FOR RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA TO \$3,024; LIMITING THE FINANCIAL ASSISTANCE TO NONBENEFICIARY STUDENTS ENROLLED IN COURSES FOR WHICH CREDIT IS TRANSFERABLE TO ANOTHER MONTANA COLLEGE OR UNIVERSITY, EXCEPT FOR COURSES DIRECTLY RELATED TO A VOCATIONAL DEGREE PROGRAM OR TO A 2- TO 4-YEAR DEGREE PROGRAM OR CERTIFICATE PROGRAM; ELIMINATING THE REQUIREMENT TO SUBTRACT THE AMOUNT GIVEN IN INDIAN FEE WAIVERS PRIOR TO DISTRIBUTION OF MONEY FOR NONBENEFICIARY WAIVERS; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-428, MCA, is amended to read:

“20-25-428. Financial assistance for resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide financial assistance to tribally controlled community colleges for enrolled resident nonbeneficiary students *who, except as provided in subsection (8), are taking courses for which credit is transferable to another Montana college or university.*

(2) Each tribal community college shall apply for this assistance to the regents. Except as provided in subsection (6), the money must be distributed on a prorated basis according to the *eligible* resident nonbeneficiary student enrollment in each tribal community college during the previous year. To

qualify, a resident nonbeneficiary student ~~shall~~ *must* meet the residency requirements as prescribed for the system by the regents *and, except as provided in subsection (8), must be enrolled in courses for which credit is transferable to another Montana college or university.* The distribution for any student is limited to a maximum of ~~\$1,500~~ \$3,024 each year for each full-time equivalent student.

(3) An expenditure is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest association of schools and colleges;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system; ~~and~~

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled, except as provided in subsection (8), will be accepted at another Montana college or university; and

~~(d)~~ filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall:

~~(a)~~ grant to *eligible* resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system; ~~and~~

~~(b) subtract the costs of resident nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed.~~

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8) The limit of financial assistance to nonbeneficiary students enrolled in courses for which credit is transferable to another Montana college or university does not apply to a nonbeneficiary student enrolled in a course directly related to a vocational degree program or to a 2- to 4-year degree program or certificate program."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 148

[HB 17]

AN ACT REQUIRING THAT ALL MONEY RECEIVED BY THE MONTANA HISTORICAL SOCIETY THROUGH DONATION, GIFT, BEQUEST, OR LEGACY BE USED FOR THE GENERAL OPERATION OF THE SOCIETY UNLESS OTHERWISE PROVIDED BY THE DONOR; AMENDING SECTIONS 22-3-107 AND 22-3-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-107, MCA, is amended to read:

“22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix the director's salary, and prescribe the director's duties and responsibilities;

(4) to create classes of memberships in the society as they consider desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects, or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from the sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report must include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Money in the amount of less than \$500 received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state treasury and used for the general operation of the society. ~~Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of \$500 or more must be deposited in the acquisitions trust established in 22-3-113.~~

(10) to collect, assemble, preserve, and display, when appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs,

statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials that exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana, with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate the objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211."

Section 2. Section 22-3-114, MCA, is amended to read:

"22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue. (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent fund subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) ~~Unless otherwise provided by the donor, donations of \$500 or more received pursuant to 22-3-107(9) and revenue~~ *Revenue* earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 149

[HB 32]

AN ACT ELIMINATING CONFLICTS IN VITAL RECORDS STATUTES; ELIMINATING THE REQUIREMENT THAT LOCAL REGISTRARS RETAIN CERTIFICATE COPIES IF CERTIFICATES ARE FILED ELECTRONICALLY; ALLOWING A NEW BIRTH CERTIFICATE TO BE ISSUED FOR A FOREIGN PERSON ADOPTED IN MONTANA REGARDLESS OF CITIZENSHIP; AMENDING SECTIONS 50-15-109, 50-15-223, AND 50-15-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-109, MCA, is amended to read:

"50-15-109. Certificates. (1) All certificates ~~shall~~ *must* include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and, *unless the certificate is filed electronically*, retain a triplicate copy.

(3) Local registrars ~~shall~~ *may* not issue certified copies of certificates.

(4) Certificates filed within ~~6 months~~ *1 year* after the time prescribed by the department ~~shall be~~ *are* prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to ~~his~~ *the alleged father's* interests, ~~his~~ heirs, next of kin, devisees, legatees, or other successors in interest."

Section 2. Section 50-15-223, MCA, is amended to read:

"50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate

jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department ~~may~~ *shall* direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state ~~either be sealed from inspection or be forwarded immediately to the department for sealing from inspection.~~

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person *who was* born in a foreign country ~~who is not a citizen of the United States and who was adopted through a district court in this state.~~

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the

certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.”

Section 3. Section 50-15-304, MCA, is amended to read:

“50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words “department of public health and human services” substituted for the words “attendant’s own signature”; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only ~~on~~ *order of a court as provided in 50-15-223(2)*.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 150

[HB 34]

AN ACT ALLOWING NONRESIDENTS WHO HOLD CERTAIN HUNTING
LICENSES TO PURCHASE A NONRESIDENT WILD TURKEY TAG AT A

DISCOUNTED FEE; AMENDING SECTION 87-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-403, MCA, is amended to read:

“87-2-403. (Temporary) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is \$5 for a resident and \$115 for a nonresident, *except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for \$55.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person’s wildlife conservation license. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is \$5 for a resident and \$105 for a nonresident, *except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for \$55.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person’s wildlife conservation license.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 151

[HB 44]

AN ACT EXEMPTING REVENUE RECEIVED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FOR THE ADMISSION OF NONRESIDENT CHILDREN FROM THE REQUIREMENT TO SPEND NONGENERAL FUND MONEY BEFORE GENERAL FUND MONEY; AMENDING SECTIONS 17-2-108 AND 20-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-108, MCA, is amended to read:

“17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5), the Montana state library in 22-1-226(5), *the Montana school for the deaf and blind in 20-8-107(5)*, and the department of public health and human services in 53-1-612, an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) Except as provided in 53-1-612, the approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

(3) If directed by an appropriation act, the approving authority may decrease a state special revenue, proprietary, or other fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The appropriation for the fund in which the money is received is decreased by the amount of the federal special revenue increase allowed by law, rule, or contract and approved for the purpose.”

Section 2. Section 20-8-107, MCA, is amended to read:

“20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Hearing impaired or visually impaired children who are not residents of the state of Montana may be admitted to the Montana school for the deaf and blind after proper application for admission, subject to all eligibility requirements prescribed for children who are residents of the state if:

(a) the school is paid in advance a sum of money for each child equal to an estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and

(b) the full capacity of the school is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

(3) Indian children who are Montana residents are eligible for admission and must be admitted to the school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes.

(5) *The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind from the negotiated agreements described in subsection (2) of this section and through the statutory appropriation provided for in subsection (4) of this section.*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 152

[HB 88]

AN ACT REPEALING THE REQUIREMENT FOR A SIMPLIFIED APPLICATION FORM FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROGRAMS THAT PROVIDE CHILDREN'S HEALTH CARE; REPEALING SECTION 53-4-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 53-4-1006, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 153

[HB 100]

AN ACT REQUIRING PERSONS AT SEARCHED PREMISES TO BE RESTRAINED IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH THE SAFETY OF THE PERSON OR PERSONS PERFORMING THE SEARCH; AND AMENDING SECTION 46-5-228, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-228, MCA, is amended to read:

“46-5-228. Procedures assisting in execution of service of search warrant. (1) All necessary and reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or object to serve a search warrant, *but any restraint or detention of the person served must be in the least restrictive manner that is consistent with the safety of the person serving the warrant and anyone assisting that person.*”

(2) The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search, *but must do so in the least restrictive manner that is consistent with the safety of the*

person serving the warrant and anyone assisting that person. The search of persons on the premises is:

(a) *for ~~self-protection~~ protection of the person serving the warrant and anyone assisting that person; or*

(b) *to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant."*

Approved April 7, 2005

CHAPTER NO. 154

[HB 103]

AN ACT PROVIDING THAT A CITY ATTORNEY SHALL, WITHIN 10 DAYS, SERVE UPON THE ATTORNEY GENERAL A COPY OF ANY NOTICE OF APPEAL THAT THE CITY ATTORNEY FILES OR RECEIVES IN A CRIMINAL PROCEEDING; AND AMENDING SECTION 7-4-4604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4604, MCA, is amended to read:

"7-4-4604. Duties. ~~It shall be the duty of the~~ *The city attorney to attend shall:*

(1) *appear* before the city court and other courts ~~of the city and the district court~~ and prosecute on behalf of the city;

(2) *serve upon the attorney general within 10 days of the filing or receipt a copy of any notice of appeal that the city attorney files or receives in a criminal proceeding;*

(3) ~~He shall,~~ when required, ~~draw,~~ draft for ~~the use of~~ the city council; contracts and ordinances for the government of the city;

(4) ~~and,~~ when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the ~~corporation;~~ city; and

(5) ~~He shall~~ perform such other duties ~~as that~~ *as that* pertain to the functions of the city council or ~~as that the city council may prescribe~~ *prescribes* by resolution."

Approved April 7, 2005

CHAPTER NO. 155

[HB 113]

AN ACT REQUIRING ALL FELONS TO SUBMIT A DNA SAMPLE; AUTHORIZING THE USE OF PREVIOUSLY COLLECTED SAMPLES; AMENDING SECTION 44-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by the department or a vial or other container of blood.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification index" means the DNA identification record system established under 44-6-102.

(5) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(7) "Felony offense" means any offense under ~~Title 45, chapter 5 or 9, the Montana Code Annotated~~ for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding 1 year ~~or burglary or aggravated burglary under 45-6-204.~~

(8) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(9) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(11) "Violent offense" has the meaning contained in 46-23-502."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to biological samples collected prior to [the effective date of this act].

Approved April 7, 2005

CHAPTER NO. 156

[HB 162]

AN ACT REQUIRING A SCHOOL DISTRICT TO RETAIN CERTIFIED COPIES OF IMMUNIZATION RECORDS OF CHILDREN WHO HAVE TRANSFERRED TO ANOTHER SCHOOL DISTRICT; AND AMENDING SECTION 20-5-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-403, MCA, is amended to read:

“20-5-403. Immunization required — release and acceptance of immunization records. (1) The governing authority of any school other than a postsecondary school may not allow ~~any a~~ person to ~~commence attendance~~ *attend* as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) has been immunized against Haemophilus influenza type “b” before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow ~~any a~~ person to ~~commence attendance~~ *attend* as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall *retain a certified copy for the permanent record and* send the original immunization records for the pupil to the school district to which the pupil transfers.”

Approved April 8, 2005

CHAPTER NO. 157

[HB 174]

AN ACT PROVIDING THAT A PRIVATE FISH POND LICENSE IS VALID FOR 10 YEARS; PROVIDING FOR A \$10 APPLICATION AND RENEWAL FEE; PROVIDING FOR THE TRANSFER OF A PRIVATE FISH POND LICENSE IN CERTAIN INSTANCES; AMENDING SECTION 87-4-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-606, MCA, is amended to read:

“87-4-606. Term of license — fees — site inspections — license not transferable — exception for transfer. (1) *Except as provided in subsections (3) and (4), a private fish pond license is valid for 10 years.*

(2) *There is a \$10 application fee and a \$10 renewal fee for each private fish pond license.*

(3) (a) *Except as provided in subsections (3)(b), (3)(c), and (4), a private fish pond license expires on February 28 of the 10th year succeeding the year of issuance or renewal.*

(b) *A private fish pond licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on ~~January 31~~ February 28 of the year succeeding the year of issuance.*

(c) *For a license that has been in effect for more than 10 years as of [the effective date of this act], the license holder shall apply for renewal within 1 year of [the effective date of this act].*

(d) ~~Application~~ *An application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted and if the licensee has met all of the requirements governing private fish ponds in 87-4-603 and this section.*

(2)(4) ~~A licensee who does not sell fish or eggs is not required to renew his license. However, a new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.~~

(3)(5) (a) ~~A~~ *Except as provided in subsection (5)(b), a private fish pond license granted under 87-4-603 is not transferable.*

(b) *If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer. The transfer must be approved by the department before the new owner or operator may continue operation of the private fish pond.*

(c) *A transferred license retains the remaining portion of the original license's term."*

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to any private fish pond license application pending review and approval by the department on [the effective date of this act] and applies prospectively to any fish pond license as of [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 158

[HB 191]

AN ACT CLARIFYING THAT SPOUSAL PRIVILEGE APPLIES ONLY TO COMMUNICATIONS MADE BETWEEN SPOUSES DURING THE MARRIAGE; CLARIFYING EXCEPTIONS; AMENDING SECTION 26-1-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1-802, MCA, is amended to read:

"26-1-802. Spousal privilege. ~~A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception~~ *Neither spouse may, without the consent of the other, testify during or after the marriage concerning any communication made by one to the other during their marriage. The privilege is*

restricted to communications made during the existence of the marriage relationship and does not extend to communications made prior to the marriage or to communications made after the marriage is dissolved. The privilege does not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding for a crime committed by one spouse against the other or against a child of either spouse."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 159

[HB 196]

AN ACT DELINEATING THE FIDUCIARY RESPONSIBILITY OF AN AGENT TO A PRINCIPAL IN THE STATUTORY FORM POWER OF ATTORNEY; ALLOWING FOR AN AGENT'S SIGNATURE; AND AMENDING SECTION 72-31-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory form of power of attorney. (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I (insert your name and address) appoint (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

..... (A) real property transactions;

..... (B) tangible personal property transactions;

..... (C) stock and bond transactions;

..... (D) commodity and option transactions;

..... (E) banking and other financial institution transactions;

..... (F) business operating transactions;

- (G) insurance and annuity transactions;
- (H) estate, trust, and other beneficiary transactions;
- (I) claims and litigation;
- (J) personal and family maintenance;
- (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;
- (L) retirement plan transactions;
- (M) tax matters;
- (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL
INSTRUCTIONS LIMITING OR EXTENDING
THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1.
2.
3.

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this day of, 20...

.....
(Your Signature)

.....
(Your Social Security Number)

State of

(County) of

This document was acknowledged before me on

.....
(Date) by

.....
(Name of Principal)

.....
(Signature of Notarial Officer)

(Seal, if any)

.....
(Title (and Rank))

[My commission expires:.....]

BY SIGNING, ACCEPTING, OR ACTING UNDER THE APPOINTMENT, ~~THE AGENT ASSUMES~~ THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. ~~THE AGENT WORKS EXCLUSIVELY FOR THE BENEFIT OF THE PRINCIPAL. THE FOREMOST DUTY AS THE AGENT IS THAT OF LOYALTY TO AND PROTECTION OF THE BEST INTERESTS OF THE PRINCIPAL. THE AGENT SHALL DIRECT ANY BENEFITS DERIVED FROM THE POWER OF ATTORNEY TO THE PRINCIPAL. THE AGENT HAS A DUTY TO AVOID CONFLICTS OF INTEREST AND TO USE ORDINARY SKILL AND PRUDENCE IN THE EXERCISE OF THESE DUTIES.~~

.....

(Signature of Agent)

Signed this day of, 20...

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged. *The agent's signature is not necessary if the agent accepts or acts under the appointment.*

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

Approved April 7, 2005

CHAPTER NO. 160

[HB 201]

AN ACT EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, in Chapter 283, Laws of 2003, the Legislature appropriated to the Department of Justice from the coal severance tax permanent fund a loan, in the form of a line of credit, of up to \$650,000 as needed for the biennium ending June 30, 2005, for the purpose of conducting the natural resource damage assessment and litigation and pursuing the state of Montana's natural resource damage claims and any appeals through the natural resource damage litigation program; and

WHEREAS, less than \$200,000 of this loan has been expended through January 1, 2005.

Be it enacted by the Legislature of the State of Montana:

Section 1. Extension of natural resource damage program appropriation. The remainder of the \$650,000 loan appropriated to the department of justice for the biennium ending June 30, 2005, in section 1, Chapter 283, Laws of 2003, is reappropriated to the department for the biennium ending June 30, 2007, for the purposes as set forth in Chapter 283, Laws of 2003.

Section 2. Loan agreement. The board of investments and the department of justice shall amend the existing contract pledging the amount recovered in the litigation to the repayment of the loan, which is to be deposited in the coal severance tax permanent fund. This amendment of the contract must incorporate the provisions of [section 1] but may not modify any other terms and conditions of the contract, which incorporates the requirements of Chapter 283, Laws of 2003. The continuing loan authorized in [section 1] may not be made for expenditures incurred after June 30, 2005, until the amendment of the contract required by this section has become effective.

Section 3. Three-fourths vote required. Because [section 1] appropriates money from the coal severance tax permanent fund for 2 additional years, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 161

[HB 206]

AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES ARE UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. As used in this part, “perennial flowing stream” means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years.

Section 2. Section 85-2-113, MCA, is amended to read:

“85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the

maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4)."

Section 3. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) *Inside the boundaries of a controlled ground water area, ground water may be appropriated only:*

(a) *according to a permit received pursuant to 85-2-508; or*

(b) *according to the requirements of an order issued pursuant to 85-2-507.*

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under ~~this~~ subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

~~(2)~~(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection ~~(1)~~ (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection ~~(1)~~ (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under ~~this~~ subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

~~(3)~~(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet; ~~and~~

(b) the appropriation is less than 30 acre-feet a year; ~~and~~

(c) ~~the appropriation~~ is from a source other than a perennial flowing stream; ~~and~~

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. ~~As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within~~

(7) *Within* 60 days after constructing ~~the~~ *an* impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall ~~then~~ automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(4)(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.”

Section 4. Section 85-2-322, MCA, is amended to read:

“85-2-322. Hearing — order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under ~~this section and~~ 85-2-321 *and this section*. If the order suspends action on pending applications, the department shall notify the applicant that action on ~~his~~ *the applicant's* application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306(2), 85-2-310, and 85-2-311 or continue the suspension under this section.”

Section 5. Section 85-2-507, MCA, is amended to read:

“85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the department shall make written findings and an order. The department shall by order declare the area in

question to be a controlled ground water area if the department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers ~~which~~ *that* wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include *but is not limited to* the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) *provisions for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;*

~~(g)~~(h) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may by order designate the area in question to be a

temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area must be designated as such for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. The department may, for sufficient cause, extend the time period for an additional ~~2~~ 4 years. *The time period for an extension must be in 2-year increments. The department shall find sufficient cause for each extension. For each extension in time, and in this case,* all ground water appropriators in the controlled ground water area must be notified of the extension.

(b) During the 2-year period, *and any extensions of the time period, the department shall commence* studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area *must be commenced under the supervision and control of the department.* - Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing must be conducted by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension of the period, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending, the department may restrict further development of the subarea."

Section 6. Section 85-2-508, MCA, is amended to read:

“85-2-508. Controlled ground water areas — permits to appropriate.

(1) A person may appropriate ground water in a controlled *ground water* area ~~only~~ by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; *or*

(b) *following the requirements of an order issued pursuant to 85-2-507.*

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift, ~~(in the case of pumping developments), or within a reasonable or feasible reduction of pressure, (in the case of artesian developments).~~”

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 162

[HB 212]

AN ACT AUTHORIZING CERTAIN LOCAL GOVERNMENTS TO ENTER INTO ENERGY PERFORMANCE CONTRACTS; PROVIDING PROCEDURES AND CRITERIA FOR SOLICITING AND AWARDED ENERGY PERFORMANCE CONTRACTS; SETTING THE TERM OF ENERGY PERFORMANCE CONTRACTS; REQUIRING MONITORING AND REPORTING OF CONSERVATION MEASURES; PROVIDING THAT LOCAL GOVERNMENT STATUTORY PROCUREMENT REQUIREMENTS DO NOT APPLY TO THE PROCUREMENT OF AN ENERGY PERFORMANCE CONTRACT; PROVIDING THAT ENERGY PERFORMANCE CONTRACTS ARE NOT A GENERAL OBLIGATION OF A LOCAL GOVERNMENT UNIT; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO QUALIFY ENERGY PERFORMANCE CONTRACTORS AND PROVIDE ASSISTANCE TO LOCAL GOVERNMENTS; AMENDING SECTIONS 20-9-204 AND 20-15-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings and policy. (1) The legislature finds that:

(a) conserving energy in local government buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which local government units can achieve energy and water conservation without an initial capital outlay.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in local government buildings and energy conservation in

vehicles by authorizing local government units to enter into energy performance contracts.

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Conservation measure" means a study, audit, improvement, equipment, alternative energy system, or change in operating practices that is designed to provide energy, water, or operational cost savings at least equivalent to the amount expended by a local government unit for the study, audit, improvement, or equipment.

(2) "Conservation-related cost savings" means cost savings in the operating budget of a local government unit that are a direct result of conservation measures implemented pursuant to an energy performance contract.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy performance contract" means a contract between a local government unit and a qualified provider for evaluation, recommendation, and implementation of one or more conservation measures, evaluation of conservation-related cost savings, and a guarantee of cost savings.

(5) "Investment grade energy audit" means a comprehensive building energy systems audit, performed by a professional engineer licensed in the state of Montana, for the purpose of identifying and documenting conservation measures, cost savings factors, and estimated conservation-related cost savings from the conservation measures identified.

(6) "Local government unit" means a county, an incorporated city or town, a city-county consolidated government, a school district, a special district, or a community college district.

(7) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.

(8) "Qualified provider" means a person that:

(a) is experienced in the design, implementation, and installation of conservation measures and building improvement measures;

(b) has the technical capabilities to ensure that the conservation measures and building improvement measures generate conservation-related cost savings; and

(c) has the financial ability to guarantee performance.

Section 3. Authority to enter into energy performance contracts. (1) A local government unit may enter into an energy performance contract with a qualified provider under the procedures provided in [section 4 or 5].

(2) Nothing in [sections 1 through 9] prevents a local government unit from contracting for conservation measures under any other legal authority.

Section 4. Selection of qualified providers for energy performance contracts. (1) A local government unit may solicit submissions of qualifications to enter into an energy performance contract and proposals for investment grade energy audits. The local government unit shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the local government unit intends to institute the

conservation measures, and requests for proposals must be sent to at least three vendors known to be offering energy performance contracts. The notice must invite qualified providers to submit qualifications and proposals for investment grade energy audits.

(2) The local government unit shall evaluate qualifications and proposals according to the following capabilities and criteria:

(a) knowledge of design, engineering, installation, maintenance, and repairs associated with energy performance contracts;

(b) experience in postinstallation project monitoring, data collection, and reporting of savings;

(c) ability to guarantee conservation savings;

(d) management capability;

(e) ability to arrange long-term financing or to integrate existing financial resources, such as utility rebates and intercap loans, into projects; and

(f) experience with projects of similar size and scope.

(3) The local government unit shall negotiate a contract with the most qualified provider at a price that the local government unit determines fair and reasonable, taking into account the scope of the services rendered. If the local government unit is unable to negotiate a satisfactory contract with the most qualified provider, negotiations with that firm must be formally terminated and the local government unit shall select the next most qualified provider until an agreement is reached or the process is terminated.

Section 5. Alternative selection process. The department may solicit requests for qualifications and proposals for qualified providers to offer energy performance contracts to local government units. The department shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in at least two major daily newspapers in Montana, posted on the department's website, and sent to vendors known by the department to be offering energy performance contracts. The department shall evaluate the qualifications on the basis of the capabilities and criteria contained in [section 4(2)]. The department may then select qualified providers and negotiate energy performance contract terms with each qualified provider that may be used by a local government unit as the basis for its energy performance contract with that qualified provider without following the process provided in [section 4].

Section 6. Award of energy performance contracts. (1) A local government unit may select and negotiate with a qualified provider identified through the processes provided in [section 4 or 5].

(2) Upon selection of a qualified provider, the local government unit shall enter into a contract with the qualified provider. If this qualified provider does not employ a professional engineer licensed in the state of Montana, the qualified provider shall hire one to prepare an investment grade energy audit. The investment grade energy audit serves as the basis for the terms of an energy performance contract. The investment grade energy audit becomes the property of the local government unit.

(3) If the local government unit determines that the investment grade energy audit does not provide sufficient conservation-related cost savings, it shall pay the cost of the investment grade energy audit and decline to enter into the energy performance contract.

(4) If the local government unit determines that the investment grade energy audit provides sufficient conservation-related cost savings, it shall notify the qualified provider. The qualified provider shall provide the local government unit with plans for the proposed conservation measures that have been prepared by an engineer licensed to practice in Montana and that comply with applicable building and safety codes.

(5) Upon receipt of the information required by subsection (4), the local government unit may negotiate the conservation measures to be included in the energy performance contract and enter into the energy performance contract. The energy performance contract may include the option of payment of the costs of the investment grade energy audit and plans provided pursuant to subsection (4) through project financing.

Section 7. Term and conditions of energy performance contracts. (1)

The term of an energy performance contract must be a minimum of 3 years and may be up to the useful life of the conservation measures or 20 years, whichever is less.

(2) An energy performance contract must require the qualified provider to:

(a) guarantee the conservation-related cost savings to the extent necessary to pay for the conservation measures, including financing charges incurred over the life of the contract;

(b) monitor the reductions in energy consumption and the cost savings attributable to the conservation measures installed pursuant to the energy performance contract; and

(c) annually prepare and provide a report to the local government unit, documenting the performance of the conservation measures.

Section 8. Assistance to local governments. The department may develop model documents and provide technical assistance to local government units in the procurement of energy performance contracts and related services.

Section 9. Contracts and agreements not general obligation of local government unit. Payment obligations of a local government unit pursuant to an energy performance contract are not general obligations of the local government unit and are collectible only from conservation-related cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

Section 10. Section 20-9-204, MCA, is amended to read:

“20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee’s own school district.

(2) For the purposes of subsection (1):

(a) “pecuniary interest” does not include holding an interest of 10% or less in a corporation; *and*

(b) “contract” does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in ~~subsection~~ *subsections* (4) and (7) of this section, whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$25,000, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; or

(g) an accountant licensed under Title 37, chapter 50.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) Whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that all bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7) *Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to*

[sections 1 through 9], including construction and installation of conservation measures pursuant to the energy performance contract.”

Section 11. Section 20-15-104, MCA, is amended to read:

“20-15-104. Pecuniary interest and letting contracts. (1) It ~~shall be~~ *is* unlawful for any community college district trustee to:

(a) have ~~any~~ a pecuniary interest, either directly or indirectly, in the erection of any community college building in ~~his~~ *the trustee’s* district; ~~or~~

(b) *have a pecuniary interest, either directly or indirectly, in furnishing or repairing the same a community college building; or*

(c) be in any manner connected with the furnishing of supplies for the maintenance of the college; or ~~to~~

(d) receive or accept any compensation or reward for services rendered as trustee, except as ~~herein~~ *provided in this section*.

(2) ~~The~~ *Except for the letting of an investment grade energy audit or energy performance contract pursuant to [sections 1 through 9], including construction or installation of conservation measures pursuant to an energy performance contract, the* board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than \$5,000.

(b) Whenever the proposed contract costs are less than \$25,000 but more than \$5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than \$25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county ~~wherein~~ *in which* the area of the district lies, calling for bids to perform ~~such~~ *the* work or furnish ~~such~~ *the* supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any ~~and all~~ bids.”

Section 12. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to [sections 1 through 9] or to the construction or installation of conservation measures pursuant to the energy performance contract.

Section 13. Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 1 through 9].

(2) [Section 12] is intended to be codified as an integral part of Title 7, chapter 5, part 23, Title 7, chapter 5, part 43, Title 7, chapter 12, part 21, Title 7, chapter 12, part 41, and Title 18, chapter 8, part 2, and the provisions of Title 7, chapter 5, part 23, Title 7, chapter 5, part 43, Title 7, chapter 12, part 21, Title 7, chapter 12, part 41, and Title 18, chapter 8, part 2, apply, respectively, to [section 12].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 163

[HB 223]

AN ACT ELIMINATING THE AUTHORITY FOR AND PROVISIONS GOVERNING THE OPERATION OF A FOREIGN CAPITAL DEPOSITORY; AMENDING SECTIONS 15-1-501, 15-1-121, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 31-1-704, 31-1-802, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND REPEALING SECTIONS 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, AND 70-9-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-331;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121; *and*
- (h) estate taxes under Title 72, chapter 16; ~~and~~
- ~~(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.~~

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as

prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department.”

Section 2. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

~~(v) 25-9-804;~~ and

~~(vi)~~(v) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-220;

(j) title and registration fees pursuant to 61-3-203;

(k) veterans' cemetery license plate fees pursuant to 61-3-459;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) ~~Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).~~

(ii)(i) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A) (3)(a)(i)(A).

~~(iii)~~(ii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A).

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ (3)(a)(i)(B) and ~~(3)(a)(iii)(B)~~ (3)(a)(ii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A) and ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to

subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(e) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$4,812~~
~~Silver Bow~~	~~Ramsay Industrial~~	~~597,594;~~

~~(ii) for fiscal years 2004 and 2005:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$2,406~~
~~Silver Bow~~	~~Ramsay Industrial~~	~~298,797; and~~

~~(iii) \$0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(e) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

(9)(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)~~(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 3. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. ~~A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1,~~

~~2012.~~ For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 4. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;
- (i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;
- (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;
- (k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.
- (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of

the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a);

~~(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.~~

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 5. Section 25-9-506, MCA, is amended to read:

"25-9-506. Fees. (1) Except as provided for in subsection (2), a person filing a foreign judgment shall pay to the clerk of court a fee of \$60.

~~(2) A person filing a judgment against a customer of a foreign capital depository, as defined in 32-8-103, shall pay to the clerk of court a fee of \$2,500.~~

~~(3)(2)~~ Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

~~(4)(3)~~ Fees collected by the clerk of district court must be forwarded to the department of revenue for deposit in the state general fund."

Section 6. Section 25-9-603, MCA, is amended to read:

"25-9-603. Applicability. This part applies to any foreign judgment, ~~other than a judgment obtained against a customer of a foreign capital depository, as defined in 32-8-103,~~ that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal."

Section 7. Section 25-9-609, MCA, is amended to read:

"25-9-609. Uniformity of interpretation. ~~Except for the provisions in part 8 of this chapter pertaining to a customer of a foreign capital depository, as defined in 32-8-103, this~~ This part must be construed to effectuate the general purpose to make uniform the law of those states that enact it."

Section 8. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

~~(a) financial institutions as defined in 32-8-502;~~

~~(b)(a)~~ retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 a check for the service; or

~~(e)(b)~~ a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender.”

Section 9. Section 31-1-802, MCA, is amended to read:

“31-1-802. Purpose — rules — scope — fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to ~~financial institutions, as defined in 32-8-502,~~ ~~or~~ pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.”

Section 10. Section 32-1-101, MCA, is amended to read:

“32-1-101. Short title — application — purpose. (1) Parts 1 through 5 of this chapter may be known as the “Bank Act”.

(2) The Bank Act is applicable to:

(a) all corporations and persons specified in 32-1-102;

(b) corporations that subject themselves to the Bank Act; *and*

(c) persons, partnerships, or corporations who by violating the Bank Act become subject to the penalties provided in the Bank Act; ~~and~~

~~(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, chapter 8, specifically require foreign capital depositories to be subject to provisions of the Bank Act.~~

(3) (a) The purpose of the Bank Act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The Bank Act does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the Bank Act and provides guidelines in the construction and application of the Bank Act.”

Section 11. Section 32-1-102, MCA, is amended to read:

“32-1-102. Institutions to which chapter is applicable. (1) The word “bank” as used in this chapter means any corporation, ~~other than a foreign capital depository, as defined in 32-8-103,~~ that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, ~~except for the operations of a foreign capital depository,~~ whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent’s principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

~~(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories.~~

~~(7)~~(6) This chapter does not apply to a student financial institution, as defined in 32-1-115.”

Section 12. Section 32-1-202, MCA, is amended to read:

“32-1-202. Powers and duties of board. The board shall:

(1) make final determinations upon applications for certificates of authorization for ~~foreign capital depositories and~~ new banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking ~~and to the regulation of foreign capital depositories;~~

(3) upon request of an applicant or the department, review a decision of the department on an application for the formation or closure of branch banks, sales of branch banks, or the consolidation, merger, or relocation of banks and branch banks; and

(4) conduct hearings as provided in 32-1-204.”

Section 13. Section 32-1-301, MCA, is amended to read:

“32-1-301. Organization and incorporation — articles of incorporation. (1) A person desiring to organize a banking corporation ~~or a foreign capital depository~~ shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation ~~or foreign capital depository~~ is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation ~~or foreign capital depository~~ is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation ~~or foreign capital depository~~ desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-1-216(2).

(3) A banking corporation ~~or foreign capital depository~~ may not adopt or use the name of any other banking corporation or association ~~or foreign capital depository~~, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation ~~or a foreign capital depository~~ may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation ~~or foreign capital depository~~ to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation ~~or a foreign capital depository~~ may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation.”

Section 14. Section 32-1-446, MCA, is amended to read:

“32-1-446. Safe deposit department. A bank ~~or a foreign capital depository~~ may conduct a safe deposit department. The liability of any bank ~~or~~

~~foreign capital depository~~ for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the bank ~~or foreign capital depository~~ is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.”

Section 15. Section 32-1-461, MCA, is amended to read:

“32-1-461. Bonding of employees. (1) The board of directors of a bank ~~or foreign capital depository~~ shall require bonding for all officers and employees of the bank ~~or foreign capital depository~~ whose duty includes the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds must be in a form provided or approved by the department.

(3) The bonds must be approved by the president of the bank ~~or the chief executive officer of the foreign capital depository~~, and the president's or executive officer's action must be reported to the board of directors.

(4) All bonds required by this section must be kept in the custody of the bank ~~or foreign capital depository~~ subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given.”

Section 16. Section 32-1-462, MCA, is amended to read:

“32-1-462. Persons previously convicted under banking laws — bank ~~or depository~~ employment. It is unlawful for a person who has been convicted of a violation of the banking laws of any state or nation to accept employment in a bank ~~or a foreign capital depository~~ in this state without first stating the relevant facts to the directors of the bank ~~or foreign capital depository~~. A person who has been convicted of a banking law violation may not be employed in a bank ~~or a foreign capital depository~~ without the approval of the department, granted in writing after a full consideration of the facts.”

Section 17. Section 32-1-464, MCA, is amended to read:

“32-1-464. Fraud by director, officer, agent, or employee. A director, executive officer, agent, or employee of a bank ~~or a foreign capital depository~~ is guilty of a felony if that person:

(1) knowingly receives or takes possession of any bank ~~or foreign capital depository~~ property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or to cause or direct to be made a full and true entry of the receipt or possession in its books and account; or

(b) concurs in failing to make any material entry in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that bank ~~or foreign capital depository~~ as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.”

Section 18. Section 32-1-468, MCA, is amended to read:

“32-1-468. Removal of directors, officers, or employees. A director, officer, or employee of a bank ~~or foreign capital depository~~ who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent must be removed from office by the board of directors of the bank ~~or depository~~ on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the directors failing to act as provided in this section in any action brought against them by a depositor or creditor for recovery of losses.”

Section 19. Section 32-1-473, MCA, is amended to read:

“32-1-473. Theft of funds by directors, officers, or employees. A director, officer, or employee of a bank ~~or foreign capital depository~~ who fraudulently appropriates or abstracts or misapplies any of the money, funds, credits, or property of the bank ~~or depository~~ when owned by it or held in trust or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the bank ~~or depository~~ or any person or corporation or to deceive any officer of the bank ~~or depository~~, any other person, or anyone appointed to examine the affairs of the bank ~~or depository~~ or any other person who with like intent, aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon conviction shall be imprisoned in the state prison for a period of not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.”

Section 20. Section 32-1-491, MCA, is amended to read:

“32-1-491. Destruction of records. (1) Banks ~~and foreign capital depositories~~ are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a bank ~~or foreign capital depository~~ may not be destroyed. Liability may not accrue against a bank ~~or depository~~ destroying any records, (except records of which destruction is forbidden by this section), after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1).”

Section 21. Section 32-1-492, MCA, is amended to read:

“32-1-492. Definitions — reproduction of bank records — admissibility in evidence — cost recovery. (1) (a) For the purposes of this section, “bank records” includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information- recording medium used in a bank’s normal course of business.

(b) (i) For the purposes of this section, “electronic storage” means the recording, storage, retention, maintenance, and reproduction of documents

using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(2) Except as provided in subsection (6), banks are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying on business.

(3) In an action or proceeding in which bank records may be called in question or be demanded of a bank or any officer or employee of a bank, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(4) Upon the showing required in subsection (3), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(5) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

~~(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5.~~

~~(7)~~(6) A bank may, as a condition of providing bank records to a third party in response to a subpoena or to another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the bank records."

Section 22. Section 32-1-501, MCA, is amended to read:

"32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, *and* investment companies, ~~and foreign capital depositories~~ may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank, or trust company, ~~or foreign capital depository~~ may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank, ~~or trust company, or foreign capital depository~~ that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the

requirements or rules of the department governing voluntary dissolution. The board of directors of a bank; ~~or trust company, or foreign capital depository~~ whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank; ~~or trust company, or foreign capital depository~~. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank; ~~or trust company, or foreign capital depository~~. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.”

Section 23. Repealer. Sections 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, and 70-9-701 MCA, are repealed.

Approved April 7, 2005

CHAPTER NO. 164

[HB 225]

AN ACT CLARIFYING THE LAWFUL METHOD OF HUNTING BY A LANDOWNER AND A LANDOWNER’S GUESTS AND LESSEES ON THE LANDOWNER’S PRIVATE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montanans cherish the rights that have been reserved to them in the Montana Constitution; and

WHEREAS, among those cherished rights are the right to acquire and possess property in all lawful ways and the opportunity to harvest wild game animals.

Be it enacted by the Legislature of the State of Montana:

Section 1. Lawful method of hunting on landowner’s private property. In recognition of the inalienable right of persons to acquire and possess property in all lawful ways contained in Article II, section 3, of the Montana constitution and of the heritage of individual citizens to harvest wild game animals contained in Article IX, section 7, of the Montana constitution, a landowner and a landowner’s guests and lessees may hunt on the landowner’s private property as long as the hunting is conducted in the manner provided by law and is consistent with regulations.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 165

[HB 234]

AN ACT PROVIDING THAT A MILITARY DISCHARGE CERTIFICATE INADVERTENTLY FILED WITH A COUNTY CLERK MUST BE RETURNED UPON REQUEST; CLARIFYING THAT IT IS NOT THE CLERK'S DUTY TO FILE A DISCHARGE CERTIFICATE; PROVIDING DEFINITIONS; AMENDING SECTION 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2614, MCA, is amended to read:

"7-4-2614. Records of certificates of discharge from military service.

(1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, ~~regardless of sex~~, who served with the United States forces *upon that person's request. It is not the clerk's duty to file the certificate.*

(2) ~~Military discharge certificates are~~ *A record of a military discharge certificate is* confidential and are exempt from the provisions of Title 2, chapter 6. A military discharge certificate may be disclosed only to:

- (a) the service member ~~who filed for~~ *whom the certificate was recorded*;
- (b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;
- (c) a veterans' service officer or a veterans' service organization, as defined in 10-2-111;
- (d) the veterans' affairs division of the Montana department of military affairs; or
- (e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased.

(3) *If an original discharge certificate was inadvertently filed and the county clerk still retains the certificate in its original form, upon the written request of the service member or of the service member's next of kin if the service member is deceased, the clerk shall return the filed certificate to the service member or to the service member's next of kin if the service member is deceased.*

(4) *For purposes of this section:*

- (a) *"file" means to store in original form; and*
- (b) *"record" means to make and keep a copy from which a certified original copy can be reproduced."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 166

[HB 257]

AN ACT REMOVING THE DURATIONAL LIMIT OF PERSONAL SERVICES CONTRACTS; AND REPEALING SECTION 28-2-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 28-2-722, MCA, is repealed.

Approved April 8, 2005

CHAPTER NO. 167

[HB 262]

AN ACT PROVIDING FOR MULTIPLE MUNICIPAL COURT SESSIONS AND DEPARTMENTS AND FOR A CHIEF MUNICIPAL COURT JUDGE WHEN THERE IS MORE THAN ONE JUDGE; PROVIDING FOR THE DUTIES OF A CHIEF MUNICIPAL COURT JUDGE; PROVIDING FOR A PART-TIME ASSISTANT JUDGE FOR EACH MUNICIPAL COURT JUDGE; REVISING THE QUALIFICATIONS OF A REPLACEMENT FOR A DISQUALIFIED OR SICK JUDGE; AND AMENDING SECTIONS 3-6-106, 3-6-201, AND 3-6-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-6-106, MCA, is amended to read:

“3-6-106. Sessions of the court — departments. (1) The municipal court ~~shall~~ *must* be in continuous session from 9 a.m. to noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as ~~he, in his discretion, sees fit~~ *the judge believes necessary. If there is more than one judge, each judge may hold a session of the court and may designate additional hours as the judge believes necessary.*

(2) *If there is more than one judge, the chief municipal court judge shall divide the court into departments, make rules for the government of the court, and describe the order of the court’s business. Each department must be numbered, and a judge must be assigned to each department.”*

Section 2. Section 3-6-201, MCA, is amended to read:

“3-6-201. Number of judges — election — term of office — chief judge — duties of chief judge — assistant judge. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge *who is not a part-time assistant judge appointed under subsection (6)* must be elected at the general election, as provided in 13-1-104(2). The judge’s term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until ~~his~~ *a* successor is elected and qualified.

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

(4) *If there is more than one municipal court judge, the judges shall adopt a procedure by which they either select a chief municipal court judge at the*

beginning of each calendar year or by which the position of chief municipal court judge rotates among the judges in order of seniority at the beginning of each calendar year, with the most senior judge serving during the first year of the rotation.

(5) The chief municipal court judge shall provide for the efficient management of the court, in cooperation with the other judge or judges, if any, and shall:

(a) maintain a central docket of the court's cases;

(b) provide for the distribution of cases from the central docket among the judges, if there is more than one judge, in order to equalize the work of the judges;

(c) request the jurors needed for cases set for jury trial;

(d) if there is more than one judge, temporarily reassign or substitute judges among the departments as necessary to carry out the business of the court; and

(e) supervise and control the court's personnel and the administration of the court.

(6) A municipal court judge may, with the approval of the governing body of the city, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore under 3-6-204, to serve during the municipal court judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification — judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a ~~justice of the peace for a justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge sitting or retired judge of a court of record, or an attorney of the county in which the court is located who has been a member of the state bar of Montana for 5 or more years, to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge."~~

Approved April 7, 2005

CHAPTER NO. 168

[HB 269]

AN ACT CLARIFYING THAT A STATE OR COUNTY HIGHWAY, ROAD, OR RIGHT-OF-WAY THAT PROVIDES EXISTING LEGAL ACCESS TO PUBLIC LAND OR WATERS, INCLUDING ACCESS FOR PUBLIC RECREATIONAL USE, MAY BE ABANDONED ONLY IF ANOTHER PUBLIC HIGHWAY, ROAD, OR RIGHT-OF-WAY PROVIDES SUBSTANTIALLY THE SAME ACCESS; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2615, MCA, is amended to read:

"7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

- (a) operation of law;
- (b) judgment of a court of competent jurisdiction; or
- (c) the order of the board.

(2) An order to abandon a county road is not valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to *provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302*, unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment.”

Section 2. Section 60-2-107, MCA, is amended to read:

“60-2-107. Abandonment of highways — exchange of roadways — public notice required. (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) Before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to *provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302*, unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 169

[HB 270]

AN ACT REVISING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING PROGRAM; TRANSFERRING ADMINISTRATION OF THE PROGRAM FROM THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF COMMERCE; REVISING THE

FUNDING MECHANISM; AMENDING SECTIONS 39-11-103, 39-11-201, AND 39-11-202, MCA, AND SECTION 10, CHAPTER 567, LAWS OF 2003; REPEALING SECTIONS 39-11-203 AND 39-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-11-103, MCA, is amended to read:

“39-11-103. ~~(Temporary)~~ (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) “Average weekly wage” has the meaning provided in 39-71-116.

(2) “*Department*” means the department of commerce established in 2-15-1801.

(2)(3) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

(3)(4) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

(4)(5) “Employee” means the individual employed in a new job.

(5)(6) “Employer” means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

(6)(7) “Full-time job” means a predominantly year-round position requiring an average of 35 hours of work each week.

(7)(8) (a) “New job” means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(8) “New jobs credit” means the credit provided in 39-11-203.~~

~~(9) “Office of economic development” means the office of economic development established in 2-15-218.~~

(10)(9) “Primary sector business” means an employer engaged in *establishing or* expanding operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and:

(a) for which at least 50% of the sales of the employer occur outside of Montana ~~or~~;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; *or*

(c) *the employer is a new business that provides, as determined by the committee provided for in 39-11-201, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.*

~~(11)~~(10) “Primary sector business training program” or “program” means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)~~(11) (a) “Program costs” means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of ~~purchase of~~ equipment to be owned or ~~utilized~~ *used* by the eligible training provider.

~~(13)~~(12) “Program services” means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers. ~~(Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)~~ *(Terminates June 30, 2009.)*

Section 2. Section 39-11-201, MCA, is amended to read:

“39-11-201. ~~(Temporary)~~ (Temporary) Grant review committee — appointment — powers and duties — rulemaking authority. (1) There is a seven-member ~~lean grant~~ review committee, as follows:

(a) two representatives from the private sector representing economic development, ~~appointed by the governor,~~ *appointed by the governor*;

(b) two representatives from the ~~business~~ *commercial banking* community; ~~one appointed by the president of the senate and one appointed by the speaker of the house, one appointed by the president of the senate and one appointed by the speaker of the house,~~ one of whom serves on a local workforce investment board;

(c) one representative from ~~the governor’s office,~~ *appointed by the governor* ~~a 2-year postsecondary institution, as defined in 20-9-706,~~ *appointed by the governor*;

(d) one representative from the department of revenue, ~~appointed by the governor, appointed by the governor;~~ and

(e) one representative from the department of labor and industry, ~~appointed by the governor, appointed by the governor.~~

(2) ~~The Subject to appropriation by the legislature and 39-11-202(4)(d), the~~ committee shall award training grants to a primary sector business qualified under 39-11-202 after a determination that the primary sector business:

(a) has prospects for achieving commercial success and for creating new jobs in the state;

(b) has prospects for collaboration between the public and private sectors of the state's economy;

(c) has potential for commercial success related to the specific product, process, or business development methodology proposed; *and*

(d) can provide matching funds; ~~and~~

~~(e) can be reasonably expected to provide an economic return within a reasonable period of time.~~

(3) A committee member may not personally apply for or receive a primary sector business workforce training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose the nature of the affiliation and, if the committee member is a board member or officer of the organization, may not participate in the decision of the committee regarding the grant application.

(4) The committee shall adopt rules to:

(a) provide for grant application procedures;

(b) develop procedures for awarding grants pursuant to the criteria provided in 39-11-202; and

(c) develop independent review and audit procedures to ensure that grants ~~made are~~ *have been* used for the purposes identified in the grant contracts.

(5) All decisions of the committee are final and are not subject to the contested case provisions of Title 2, chapter 4.

(6) The committee is allocated to the ~~office of economic development department~~ for administrative purposes only as provided in 2-15-121. ~~(Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.) (Terminates June 30, 2009.)~~

Section 3. Section 39-11-202, MCA, is amended to read:

“39-11-202. ~~(Temporary)~~ (Temporary) Primary sector business workforce training grants — eligibility. (1) ~~The Subject to appropriation by the legislature, the~~ grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the ~~department~~ committee.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage; *or the current average weekly wage of the county in which the employees are to be principally employed, or for jobs that will be principally located on a reservation, the current average weekly wage of the reservation.*

(b) The ~~office of economic development~~ department may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section ~~may not exceed an amount greater than the present value of expected incremental tax receipts, as described in 39-11-203, that are expected over the 10-year period immediately following the grant award. The committee shall consider the loan rate established by the board of investments pursuant to the Municipal Finance Consolidation Act of 1983 that is in effect at the time of the grant and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the maximum grant amount must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.~~

(5) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy. Funding ceilings ~~will must~~ be determined by the availability of funding, the cost for each job, ~~and the quality of the primary sector business proposal, and whether training will be provided in Montana.~~

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of

the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds *under contract* to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the ~~full~~ amount of the grant *already expended* will be reimbursed in the event that the primary sector business ceases operation *in the state of Montana* within ~~12 months from the time that the grant is awarded~~ *contract period, which may be up to 2 years*;

(ii) ~~requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues to the state, as calculated in 39-11-203, that are the result of the company failing to meet the number of jobs or pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be assessed against and paid by the company in the next fiscal year specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and~~

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. ~~(Terminates June 30, 2007—see. 10, Ch. 567, L. 2003.)~~ *(Terminates June 30, 2009.)*

Section 4. Section 10, Chapter 567, Laws of 2003, is amended to read:

“Section 10. Termination. [This act] terminates June 30, ~~2007~~ 2009.”

Section 5. Repealer. Sections 39-11-203 and 39-11-204, MCA, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 170

[HB 271]

AN ACT APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR WORKFORCE TRAINING GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated \$2,170,000 from the state general fund for fiscal year 2005 to the office of economic development established in 2-15-218 for workforce training grants as provided in 39-11-201.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 171

[HB 275]

AN ACT REQUIRING THAT THE VALUE OF A VEHICLE BE DETERMINED BY THE APPLICANT FOR A CERTIFICATE OF TITLE WHEN THE APPLICANT PROVIDES A BOND IN THE AMOUNT OF THE VALUE OF THE VEHICLE; AND AMENDING SECTION 61-3-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-208, MCA, is amended to read:

“61-3-208. Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title that assigns the prior owner's interest in the vehicle to the applicant, the department may issue a certificate of title if subsection (2) is complied with.

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:

(i) include the facts and circumstances through which the applicant acquired ownership and possession of the vehicle;

(ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the vehicle;

(iii) state that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a boat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile, and the loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is \$500 or less as indicated by the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle, according to the applicant's knowledge and belief.

(iii) The applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the vehicle for which the application is being made; as determined by the ~~surety company~~ *applicant, based on information from the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle, according to the applicant's knowledge and belief.* The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle.

(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer required to have a certificate of title in this state."

Approved April 7, 2005

CHAPTER NO. 172

[HB 281]

AN ACT CLARIFYING THAT A GUIDE OR PROFESSIONAL GUIDE MAY QUALIFY FOR LICENSURE ACCORDING TO STANDARDS ADOPTED BY THE BOARD OF OUTFITTERS IN LIEU OF AN ENDORSEMENT AND RECOMMENDATION BY A LICENSED OUTFITTER; AND AMENDING SECTION 37-47-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-303, MCA, is amended to read:

“37-47-303. Guide’s and professional guide’s qualifications. (1) An applicant for a guide’s or professional guide’s license must meet the following qualifications:

(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or professional guide;

(b) be endorsed and recommended by an outfitter with a valid license, *unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4)*; and

(c) have been issued a valid wildlife conservation license.

(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule.”

Approved April 8, 2005

CHAPTER NO. 173

[HB 306]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO PROVIDE AN ELECTRONIC DIRECTORY OF MONTANA PRODUCTS; PROVIDING RULEMAKING AND CONTRACTING AUTHORITY; ALLOWING AN EXEMPTION OF PUBLIC EMPLOYEE CONDUCT STANDARDS; AND AMENDING SECTION 2-2-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electronic directory of Montana products. (1) (a) The department of commerce shall provide an electronic directory on the internet or world wide web of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet or world wide web. Agreement by a company also means that the company grants permission for inclusion on a mailing list pursuant to 2-6-109(1).

(b) The department of commerce is not responsible for listing a company if that company has not contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.

(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, "value-added" means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product.

Section 2. Rules — contract — conduct of public officers and employees. (1) The department of commerce may adopt rules necessary for the creation, maintenance, and updating of the electronic directory provided for in [section 1]. The rules may include requirements for the design of a website, information that may be contained in the electronic directory, the format of the electronic directory, information that may be provided to potential customers, and requirements for updating material contained in the electronic directory.

(2) The department of commerce may contract with the department of administration or a private vendor for the creation, maintenance, and updating of the electronic directory and website provided for in [section 1].

(3) Public officers or employees who outside of their work for a public agency are involved in the creation of products that qualify for inclusion in the electronic directory provided for in [section 1] may list their products in the electronic directory without being in violation of the provisions of 2-2-121.

Section 3. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) *subject to subsection (6)*, use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to

any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A listing by a public officer or a public employee in the electronic directory provided for in [section 1] of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

~~(6)~~(7) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

~~(7)~~(8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

~~(8)~~(9) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 and 2].

Approved April 8, 2005

CHAPTER NO. 174

[HB 318]

AN ACT AMENDING THE HEALTH INSURANCE LIMITED COVERAGE DEMONSTRATION PROJECT LAW TO ALLOW ISSUANCE OF LIMITED COVERAGE HEALTH INSURANCE PLANS TO ADDITIONAL UNINSURED MONTANA RESIDENTS AND TO ALLOW PLANS TO EXCLUDE COVERAGE FOR CERTAIN DIABETIC BENEFITS AND FOR INBORN ERRORS OF METABOLISM; AMENDING SECTION 33-22-262, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-262, MCA, is amended to read:

“33-22-262. (Temporary) Limited coverage individual health benefit plan or managed care plan — demonstration project — criteria — rulemaking. (1) The commissioner of insurance may approve a 12-month demonstration project that allows a health insurance issuer to offer a limited coverage individual health benefit plan or managed care plan. The criteria for approval of a 12-month demonstration project include but are not limited to the following:

(a) the plan must include significant outpatient services and may not consist of inpatient benefits only;

(b) the plan may be offered only to residents of Montana who have been uninsured for 90 days or longer, *except that at the discretion of the health insurance issuer, the plan may be offered to residents of Montana if the applicant:*

(i) *lost eligibility for a health plan because of age; or*

(ii) *lost coverage under a federally funded health insurance program, such as medicare, medicaid, or the Montana children’s health insurance program, because of age or failure to meet financial guidelines; and*

(c) the commissioner may adopt rules that describe additional criteria to be used to determine approval of demonstration projects. Additional criteria must relate to the purpose as stated in 33-22-261(2).

(2) The health benefit plan or managed care plan must specify the health services that are included and must specifically list the health services that will be limited or not be covered from the partial list of state-required coverage in subsection (3). The limitations and exclusions of the plan must be prominently displayed on the application and on the outline of coverage required by 33-22-244.

(3) Subject to subsection (4), if specifically listed as a limitation or an exclusion of coverage in the proposal, a demonstration project may limit or

exclude the following health services from its health benefit plan or managed care plan:

(a) coverage of a newborn, as provided in 33-22-301, 33-30-1001, and 33-31-301(3)(e), which may be subject only to the same extent of the limitations and exclusions contained in the parent's policy;

(b) coverage for severe mental illness, as provided in 33-22-706;

(c) coverage for mental health services, as provided in 33-31-301(3)(g)(i);

(d) benefits for emergency services, as provided in 33-36-201 and 33-36-205;

(e) coverage for certain basic health care services described in 33-31-102(2)(b) and (2)(h)(v); ~~or~~

(f) services provided by a specific category of licensed health care practitioner to be provided to the covered person for a health-related condition in a health benefit plan or managed care plan, including services described in 33-22-125 and 33-30-1017;

(g) *coverage for diabetic education, treatment, services, and supplies, as provided in 33-22-129; or*

(h) *coverage for treatment of inborn errors of metabolism, as provided in 33-22-131.*

(4) All health benefit plan and managed care plan demonstration projects are subject to the following provisions:

(a) the requirement that any plan that covers physical illness generally must cover severe mental illness in a way that is no less favorable than that level provided for other physical illness generally as required by federal law;

(b) the prohibition against discrimination in 49-2-309;

(c) except as provided in subsection (3)(d), the provisions in Title 33, chapter 36, regarding network adequacy and quality assurance; and

(d) all other applicable provisions of Title 33, except those listed in subsection (3).

(5) Upon a renewal request and approval by the insurance commissioner, a demonstration project may be renewed for additional 12-month increments for a maximum total of 5 years. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to limited coverage individual health benefit plans and limited coverage managed care plans issued, renewed, or amended after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 175

[HB 321]

AN ACT ALLOWING A COUNTY PARK DISTRICT TO PURCHASE REAL PROPERTY FOR USE AS PARK AND RECREATION LAND WITH CONCURRENCE OF THE COUNTY GOVERNING BODY OR BODIES; AND AMENDING SECTIONS 7-16-2401, 7-16-2423, AND 7-16-2433, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2401, MCA, is amended to read:

“7-16-2401. Park and recreation land — definition. As used in this part, “park and recreation land” means real property, buildings, and fixtures on:

(1) land designated as park land or recreational land by the grant or deed of ~~such~~ the land to the county;

(2) land owned, leased, or otherwise possessed by a county *or county park district* and ~~which~~ that the governing body of a county *or the county park district commission* has designated as park or recreational land;

(3) land belonging to a public or private entity or person who has donated the recreational rights to ~~such~~ the land to a county park district on behalf of the county; or

(4) land ~~which~~ that, by agreement between an owner of land and a county park district, the district may use for park or recreational purposes.”

Section 2. Section 7-16-2423, MCA, is amended to read:

“7-16-2423. Powers of county park district commission. A county park district commission has all powers necessary for the *acquisition*, betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

(2) *with the concurrence of the county governing body or bodies, lease or purchase real property for use as park and recreation land;*

~~(2)~~(3) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

~~(3)~~(4) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain the buildings and facilities;

~~(4)~~(5) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

~~(5)~~(6) impose by resolution and collect charges for those services and facilities provided by the district that the commission considers necessary for the prudent operation of the district;

~~(6)~~(7) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

~~(7)~~(8) establish a fee on each household for the operation of the district as provided in 7-16-2431;

~~(8)~~(9) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

~~(9)~~(10) with the concurrence of the county governing body or bodies, accept donations *or devises* of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county or counties;

~~(10)~~(11) accept donations and devises of money or personal property.”

Section 3. Section 7-16-2433, MCA, is amended to read:

“7-16-2433. Park district bonds authorized. (1) A county park district may borrow money by the issuance of its bonds to provide funds for payment of all or part of the cost of *lease or purchase of park and recreation land or of construction, acquisition, furnishing, equipping, extension, and betterment of park facilities* and to provide an adequate working capital for park facilities.

(2) The amount of bonds issued for the purposes provided in subsection (1) and outstanding at any time may not exceed 1.22% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) The bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.”

Approved April 8, 2005

CHAPTER NO. 176

[HB 371]

AN ACT PROVIDING THAT MONEY FROM ANY SOURCE MAY BE PLACED IN THE COUNTY PREDATORY ANIMAL CONTROL FUNDS TO BE USED FOR COUNTY PREDATORY ANIMAL CONTROL; AMENDING SECTIONS 81-7-303 AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-303, MCA, is amended to read:

“81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 1 year of age or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of a sheep 1 year of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part."

Section 2. Section 81-7-603, MCA, is amended to read:

"81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months old or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months old or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 177

[HB 409]

AN ACT REVISING THE WORKFORCE DRUG AND ALCOHOL TESTING PROGRAM; REVISING THE DEFINITION OF SAMPLE; REVISING THE CRITERIA FOR A QUALIFIED TESTING PROGRAM; AND AMENDING SECTIONS 39-2-206, 39-2-207, AND 39-2-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(10) "Sample" means a urine specimen, *a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or a breath alcohol test to determine the presence of alcohol.*

Section 2. Section 39-2-207, MCA, is amended to read:

"39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. *Controlled substance and alcohol testing procedures for samples that are covered by 49 CFR, part 40, must conform to 49 CFR, part 40. For samples that are not covered by 49 CFR, part 40, the qualified testing program must contain chain of custody and other procedural requirements that are at least as stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United States food and drug administration.* At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in 39-2-208;

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's implementation of 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of ~~urine~~ urine samples must be performed in accordance with 49 CFR, part 40, and the collection, transport, and confirmation testing of nonurine samples must be as stringent as the requirements of 49 CFR, part 40, in requiring split specimens as defined by the United States department of health and human services,

requiring transport to a testing facility under the chain of custody, and confirmation of all screened positive results using mass-spectrometry technology.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body."

Section 3. Section 39-2-209, MCA, is amended to read:

"39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the ~~urine~~ split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test."

Approved April 7, 2005

CHAPTER NO. 178

[HB 420]

AN ACT PROVIDING THAT IN A CHILD ABUSE AND NEGLECT PROCEEDING, IF A MEMBER OF THE CHILD'S EXTENDED FAMILY HAS REQUESTED THAT TEMPORARY OR PERMANENT CUSTODY BE AWARDED TO THAT FAMILY MEMBER AND THE REQUEST IS DENIED, THE FAMILY MEMBER IS ENTITLED TO A WRITTEN STATEMENT OF THE REASONS FOR THE DENIAL AS ALLOWED BY CONFIDENTIALITY LAWS; AND AMENDING SECTIONS 41-3-438, 41-3-439, AND 41-3-445, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court must inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 2. Section 41-3-439, MCA, is amended to read:

"41-3-439. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow."

Section 3. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan. *If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court must inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.*

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.”

Approved April 8, 2005

CHAPTER NO. 179

[HB 427]

AN ACT INCREASING THE AMOUNT DEDUCTED FROM A POLICE OFFICER'S MONTHLY COMPENSATION THAT IS USED TO PAY PREMIUMS ON GROUP LIFE INSURANCE AND FOR REPRESENTATION BY THE POLICE PROTECTIVE ASSOCIATION; AND AMENDING SECTION 7-32-4122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4122, MCA, is amended to read:

“7-32-4122. Contributions for group life insurance and representation. (1) Unless the police protective association of the city or town chooses not to participate, as provided in 7-32-4123, an employer shall deduct from each police officer's monthly compensation, except that of a police chief, assistant chief, or captain, an amount equal to ~~0.5%~~ 1% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies ~~his~~ *the person's* employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, “police officer” means an officer who participates in the police officers' retirement system under Title 19, chapter 9.”

Approved April 7, 2005

CHAPTER NO. 180

[HB 478]

AN ACT PROVIDING THAT INDIVIDUALS REQUIRED TO REGISTER IN COMPLIANCE WITH THE FEDERAL MILITARY SELECTIVE SERVICE ACT MUST BE PROVIDED AN OPPORTUNITY TO FULFILL

REGISTRATION REQUIREMENTS IN CONJUNCTION WITH AN APPLICATION FOR A DRIVER'S LICENSE, COMMERCIAL DRIVER'S LICENSE, INSTRUCTION PERMIT, OR STATE IDENTIFICATION CARD; REQUIRING THE DEPARTMENT OF JUSTICE TO SUBMIT ANY SUPPLIED REGISTRATION INFORMATION TO THE SELECTIVE SERVICE SYSTEM; AND AMENDING SECTION 61-5-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for an instruction permit, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)

Approved April 7, 2005

CHAPTER NO. 181

[HB 481]

AN ACT ESTABLISHING A MAIN STREET PROGRAM IN THE DEPARTMENT OF COMMERCE TO BE DEVELOPED IN CONJUNCTION WITH THE NATIONAL TRUST FOR HISTORIC PRESERVATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Main street program — establishment — purpose — rulemaking. (1) There is a main street program in the department of commerce developed in conjunction with the main street program of the national trust for historic preservation.

(2) The purpose of the program is to:

(a) assist communities in restoring and retaining the historic character of their downtown areas and historic commercial districts;

(b) stimulate business investment, assist in retaining existing small businesses, and promote new businesses in those areas;

(c) strengthen the local tax base;

(d) create employment opportunities in community downtown areas and historic districts; and

(e) generally enhance the economic viability of downtown areas and historic districts.

(3) (a) The department of commerce may adopt rules governing the operation of the main street program.

(b) In developing the rules, the department shall consult with the national trust for historic preservation, provided for in 16 U.S.C. 468, to ensure that Montana's main street program is consistent with the main street program operated by the national trust for historic preservation.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 7, 2005

CHAPTER NO. 182

[HB 507]

AN ACT ALLOWING ADDITIONAL COMPENSATION FOR COUNTY CLERKS AND RECORDERS WHO ARE ALSO ELECTION ADMINISTRATORS; AND AMENDING SECTION 7-4-2503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

“7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) *If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.*

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Approved April 8, 2005

CHAPTER NO. 183

[HB 520]

AN ACT PROVIDING THAT INFORMATION OR STATEMENTS PROVIDED BY A PERSON UNDER 21 YEARS OF AGE TO A HEALTH CARE PROVIDER OR LAW ENFORCEMENT PERSONNEL REGARDING AN ALLEGED OFFENSE AGAINST THAT PERSON UNDER THE CRIMINAL LAWS RELATING TO SEXUAL OFFENSES AGAINST A PERSON MAY NOT BE USED IN A PROSECUTION OF THAT PERSON FOR THE OFFENSE OF BEING A MINOR IN POSSESSION OF AN INTOXICATING SUBSTANCE; PROVIDING THAT THE SAME PROTECTION EXTENDS TO A PERSON WHO HELPS THE VICTIM OBTAIN MEDICAL OR OTHER ASSISTANCE OR REPORT THE OFFENSE TO LAW ENFORCEMENT PERSONNEL; AMENDING SECTION 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

“45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order. (1)

A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense, shall be fined an amount not to exceed \$200, and may be ordered to perform community service;

(b) for a second offense, shall be fined an amount not to exceed \$200 and may be ordered to perform community service;

(c) for a third or subsequent offense, shall be fined an amount not to exceed \$500 and:

(i) may be ordered to perform community service;

(ii) shall be ordered to complete an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iii) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), or (2)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(c)(ii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint

commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(10) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel. (See compiler's comments for contingent termination of certain text.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 184

[HB 555]

AN ACT CREATING THE MONTANA PARENTS AS SCHOLARS PROGRAM; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE A PROGRAM WITH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES OR MAINTENANCE OF EFFORT FUNDS TO FUND PUBLIC ASSISTANCE TO RECIPIENTS IN APPROVED EDUCATIONAL PROGRAMS; AMENDING SECTIONS 53-4-201 AND 53-4-212, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana parents as scholars program — department duties. (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds, to the extent practicable, in a program to provide public assistance only to eligible individuals for the purpose of continuation of education leading toward a high school diploma, a general equivalency degree, an associate's degree, or a baccalaureate degree;

(b) establish or coordinate a skills training center pilot program in coordination with the board of regents or a community college district to provide training to individuals identified as appropriate through an assessment process;

(c) allow an individual receiving public assistance from the program to attend an approved educational program if the individual:

- (i) has completed an employee assessment conducted as provided by rule;
 - (ii) meets the income and resource eligibility requirements;
 - (iii) qualifies as a full-time student pursuant to subsection (4); and
 - (iv) completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment;
 - (d) limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level or one vocational training program; and
 - (e) amend the state plan submitted to the United States department of health and human services to provide that the state elects, as authorized by 42 U.S.C. 602(a)(1)(A)(ii), to define work as including all activities permitted under 42 U.S.C. 607 and satisfactory full-time school attendance.
- (3) The department shall provide for dependent day care while the recipient is in a work activity.
- (4) A program must require a recipient to be a full-time student, which means a recipient:
- (a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year;
 - (b) shall maintain a 2.0 grade point average on a 4.0 grade point scale;
 - (c) shall cooperate with paternity and child support requirements;
 - (d) shall agree to relocate after graduation, if necessary, to seek employment in a job for which the education was intended; and
 - (e) may not be allowed to remain in the program after receiving a baccalaureate degree.

Section 2. Section 53-4-201, MCA, is amended to read:

"53-4-201. Definitions. As used in part 6 and this part, the following definitions apply:

(1) *"Approved educational program" means:*

(a) *a program in a unit of the Montana university system, as provided in 20-25-201, a community college, a tribal college, or any other accredited college in Montana in which an individual is enrolled in pursuit of an associate's or baccalaureate degree; or*

(b) *an accredited high school or training program approved by the department by rule.*

~~(1)~~(2) "Assessment" means the process of evaluating a recipient's skills, education, job readiness, and barriers to employment. The term may include further in-depth examination to identify and access services and resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial assessment.

~~(2)~~(3) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~(4) (a) "Dependent child", for public assistance purposes, means:

(i) a child under 18 years of age; or

(ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection ~~(3)(a)(i)~~ (4)(a)(i) or ~~(3)(a)(ii)~~ (4)(a)(ii) must be living with a specified caretaker relative, as defined by the department by rule.

~~(4)~~(5) "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

~~(5)~~(6) "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

~~(6)~~(7) "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

~~(7)~~(8) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

~~(8)~~(9) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

~~(9)~~(10) "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

~~(10)~~(11) "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

~~(11)~~(12) "State plan" means the policies and procedures governing the state of Montana's FAIM project and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.

~~(12)~~(13) "Temporary assistance for needy families" means the federal block grant established pursuant to 42 U.S.C. 601, et seq."

Section 3. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of public assistance programs.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month,

specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any; ~~and~~

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued; *and*

(t) *approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the Montana parents as scholars program provided for in [section 1].*"

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2006.

Approved April 8, 2005

CHAPTER NO. 185

[HB 556]

AN ACT CLARIFYING THE MENTAL STATE RELATED TO ONE TYPE OF MEDICAID FRAUD; CLARIFYING THAT A FALSE OR MISLEADING STATEMENT IS NEEDED FOR THAT TYPE OF MEDICAID FRAUD; REMOVING A PROVISION ALLOWING A CONVICTION FOR ATTEMPTING TO OBTAIN A SERVICE OR ITEM THAT THE PERSON IS NOT ENTITLED TO UNDER A REGULATION OR POLICY NOT ADOPTED AS AN ADMINISTRATIVE RULE UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 45-6-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-313, MCA, is amended to read:

“45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

~~(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item when that the person knows or has reason to know that the person is not entitled to under applicable statutes, regulations, or under rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or~~

~~(ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement, representation, application, or document under the medicaid program for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed; adopted under Title 2, chapter 4;~~

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under

subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term not less than 30 days or more than 1 year.

(b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding \$1,000 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.

(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or benefits obtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law."

Approved April 7, 2005

CHAPTER NO. 186

[HB 559]

AN ACT ALLOWING AN IRREVOCABLE LETTER OF CREDIT AS SECURITY FOR A PUBLIC CONSTRUCTION CONTRACT; AND AMENDING SECTION 18-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-201, MCA, is amended to read:

“18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

- (i) faithfully perform all of the provisions of the contract;
- (ii) pay all laborers, mechanics, subcontractors, and material suppliers; and
- (iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, ~~or~~ bank draft, *or irrevocable letter of credit*, drawn or issued by:
 - (i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or
 - (ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500.”

Approved April 8, 2005

CHAPTER NO. 187

[HB 567]

AN ACT EXPANDING UNEMPLOYMENT BENEFITS TO INCLUDE AN INDIVIDUAL WHO LEAVES WORK DUE TO BEING A VICTIM OF A SEXUAL ASSAULT OR STALKING; AND AMENDING SECTION 39-51-2111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2111, MCA, is amended to read:

“39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, *a sexual assault, or stalking* or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, *a sexual assault, or stalking*.

(b) An employer's account may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, *a sexual assault, or stalking* as provided for in subsection (1)(a).

(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, *a sexual assault, or stalking* if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, *sexual assault, or stalking*;

(c) medical documentation of domestic violence, *or a sexual assault*; or

(d) other documentation or certification of domestic violence, *a sexual assault, or stalking* provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, *a sexual assault, or stalking*.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section,:

(a) "domestic violence" means the physical, ~~sexual~~, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

Approved April 7, 2005

CHAPTER NO. 188

[HB 581]

AN ACT REVISING AIR QUALITY LAWS; MODIFYING PUBLIC COMMENT PERIODS FOR CERTAIN AIR QUALITY PERMITS; CLARIFYING THE FILING DEADLINE FOR CERTAIN AFFIDAVITS; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH RULEMAKING AUTHORITY TO AUTHORIZE AND EXTEND PUBLIC COMMENT PERIODS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to

list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, *except as provided in subsection (13)*.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include an~~ An affidavit setting forth the grounds for the request *must be filed within 30 days after the department renders its decision.* The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) *The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).*

(14) *The board shall provide, by rule, the basis upon which the department may extend by 15 days:*

(a) *the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and*

(b) *the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).*

~~(13)~~(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection ~~(13)(a)~~ (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 7, 2005

CHAPTER NO. 189

[HB 607]

AN ACT REMOVING REQUIREMENTS FOR COUNTY TREASURERS TO NOTE TAX RECEIPTS BY CERTAIN DEADLINES AND TO DEMAND PAYMENT OF ROAD TAXES; CHANGING REPORTING DEADLINES FOR COUNTY TREASURERS TO COMPORT WITH THE FISCAL YEAR; AMENDING SECTIONS 15-16-301, 15-24-210, AND 15-24-302, MCA; REPEALING SECTIONS 15-16-115 AND 15-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-301, MCA, is amended to read:

“15-16-301. Delinquent list — list of taxes suspended or canceled — real property. (1) ~~On the third Monday of December and on~~ *On the third Monday of June of each year, the county treasurer must shall* make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes. *The report may be submitted to the county clerk and recorder electronically.*

(2) The county treasurer ~~must shall~~ make a separate report to the county clerk and recorder showing the amount of taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, during the ~~6-month~~ *1-year* period immediately preceding the date of the report.

(3) The county clerk and recorder shall compare the reports with the books of the county treasurer and shall keep a record of the reports in ~~his~~ *the county clerk and recorder's office.*”

Section 2. Section 15-24-210, MCA, is amended to read:

“15-24-210. Notice of impending sale to certain lienholders. After entry of a notation ~~under 15-16-115(2)~~ *by a county treasurer* concerning a mobile home or manufactured home that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home or manufactured home, the treasurer shall notify a person who has a properly perfected security interest in the mobile home or manufactured home and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home or manufactured home.”

Section 3. Section 15-24-302, MCA, is amended to read:

“15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, ~~15-16-115~~, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, except:

(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.”

Section 4. Repealer. Sections 15-16-115 and 15-16-117, MCA, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 190

[HB 624]

AN ACT ALLOWING A SCHOOL DISTRICT TO ADOPT FOR FISCAL YEARS 2006 AND 2007 THE GREATER OF ITS MAXIMUM GENERAL FUND BUDGET OR THE HIGHEST ACTUAL BUDGET ADOPTED BETWEEN FISCAL YEAR 2001 AND FISCAL YEAR 2005; AMENDING SECTION 20-9-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-308, MCA, is amended to read:

“20-9-308. BASE budgets and maximum general fund budgets. (1)

The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in ~~subsection~~ *subsections* (3)(a)(ii) and (3)(b), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. ~~A Except as provided in subsection (3)(b), a school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. A Except as provided in subsection (3)(b), a school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:~~

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) ~~The~~ *Except as provided in subsection (3)(b), the* trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) *A school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005.*

~~(b)(c)~~ The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to school budgets for the school fiscal year beginning July 1, 2005.

Section 3. Termination. [This act] terminates June 30, 2007.

Approved April 8, 2005

CHAPTER NO. 191

[HB 631]

AN ACT REVISING THE CONDITIONS PRECEDENT TO THE SALE OF SURPLUS LINES INSURANCE TO PROVIDE THAT A POLICY MAY NOT BE PLACED WITH AN UNAUTHORIZED INSURER UNLESS THE PREMIUM RATE QUOTED BY THE AUTHORIZED INSURER IS AT LEAST 10 PERCENT HIGHER AND AT LEAST \$1,500 GREATER THAN THE PREMIUM RATE QUOTED BY THE UNAUTHORIZED INSURER; REQUIRING THE UNAUTHORIZED INSURER TO BE A-RATED OR BETTER; REQUIRING INFORMATION DISCLOSURE; AMENDING SECTIONS 2-9-211 AND 33-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-211, MCA, is amended to read:

“2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(2)(1)(b)~~ through ~~(4)(1)(d)~~. Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(2)(1)(b)~~ through ~~(4)(1)(d)~~ only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyds of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective

borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.”

Section 2. Section 33-2-302, MCA, is amended to read:

“33-2-302. Conditions precedent to sale of surplus lines insurance.

(1) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

(1)(a) the insurer is an eligible surplus lines insurer;

(2)(b) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer;

(3)(c) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(4)(d) the insurance is not procured for the purpose of securing:

(a)(i) a lower premium rate than would be accepted by an authorized insurer *unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer*; or

(b)(ii) an advantage in terms of the insurance contract; and

(5)(e) all other requirements of this part are met.

(2) *A contract of insurance may not be placed with an unauthorized insurer under subsection (1)(d)(i) unless the unauthorized insurer is the equivalent of A-rated or better and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.”*

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 192

[HB 636]

AN ACT INCREASING TO \$50,000 THE THRESHOLD AT WHICH A MUNICIPALITY SHALL REQUIRE BIDS FOR THE PURCHASE OF ANY AUTOMOBILE, TRUCK, OTHER VEHICLE, ROAD MACHINERY, OTHER MACHINERY, APPARATUS, APPLIANCES, EQUIPMENT, OR MATERIALS OR SUPPLIES OR FOR CONSTRUCTION, REPAIR, OR MAINTENANCE; AND AMENDING SECTIONS 7-5-4302 AND 7-5-4310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4302, MCA, is amended to read:

“7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, ~~all contracts~~ *a contract* for the purchase of any automobile, truck,

other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of \$20,000 or for construction, repair, or maintenance in excess of \$25,000 \$50,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section."

Section 2. Section 7-5-4310, MCA, is amended to read:

"7-5-4310. Use of public auction to make purchase. In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than \$25,000 of \$50,000 or less."

Approved April 8, 2005

CHAPTER NO. 193

[HB 283]

AN ACT REVISING FUNDING FOR CITY AND TOWN FIREFIGHTER RELIEF ASSOCIATION DISABILITY AND PENSION FUNDS; AMENDING SECTIONS 19-18-501, 19-18-503, AND 19-18-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-18-501, MCA, is amended to read:

"19-18-501. Contributions to fund. The disability and pension fund ~~shall consist~~ consists of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly fee ~~which shall be paid into~~ contribution to the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-18-503 and 19-18-504;

(4) all ~~moneys~~ money received from the state, including those payments provided for in 19-18-512; and

(5) all interest and other income earned from the investment of the fund."

Section 2. Section 19-18-503, MCA, is amended to read:

"19-18-503. Special tax levy for fund required Fund to be soundly funded. (1) The purpose of this section is to provide a means by which each ~~Each~~ disability and pension fund ~~may be~~ must be soundly funded. The fund is soundly funded if, subject to subsection (2):

(a) *assets in the fund are maintained at a level equal to at least 0.21% but no more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111, within the limits of the city or town; or*

(b) *funding is maintained at a level determined by an actuarial valuation to be sufficient to keep the fund actuarially sound.*

(2) *An actuarial valuation may be requested only by a city, town, or association. Once an actuarial valuation has been conducted, funding must continue to be based on actuarial determinations rather than on the total assessed value of taxable property pursuant to subsection (1)(a).*

~~(2) Subject to 15-10-420, if the fund contains less than 0.21% of the total assessed value of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a tax as provided in 19-18-504. The tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund."~~

Section 3. Section 19-18-504, MCA, is amended to read:

"19-18-504. Amount of Special tax levy for fund required. (1) ~~Whenever the fund contains an amount that is less than 0.21% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town~~ *the minimum amount required to keep the fund soundly funded pursuant to 19-18-503, the city or town council shall, subject to 15-10-420, levy an annual tax on the taxable value of all taxable property within the city or town.*

(2) *When the fund contains an amount that is less than 0.52% but more than 0.21% of the total assessed value of all taxable property within the city or town, the city or town council may, if authorized by the voters as provided in 15-10-425, levy an annual tax.*

(3) *All revenue from the tax must be deposited in the fund."*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 194

[HB 638]

AN ACT REVISING BARBER AND COSMETOLOGY LAWS; CLARIFYING CONDITIONS FOR A TEMPORARY SHOP OR SALON OPERATING PERMIT; AMENDING SECTIONS 37-31-302 AND 37-31-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-302, MCA, is amended to read:

"37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation except under a certificate of registration as a school.

(3) A person may not operate or manage a salon or shop without a license *or a temporary operating permit as provided in 37-31-312.*

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a certificate of registration and license. The application must be accompanied by the registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."

Section 2. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's license or a school's certificate of registration.

~~(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board.~~

~~(3)(2) The~~ When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop, ~~upon payment of the initial inspection fee,~~ a temporary operating permit ~~authorizing the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever occurs first.; or~~

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first. A temporary permit is not renewable.

(4) The department shall require ~~the an inspector or inspectors,~~ appointed as provided in under subsection (1); to conduct an annual inspection of each salon or shop in the state."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 195

[HB 653]

AN ACT PROVIDING A TIME LIMITATION FOR FILING CERTAIN CLAIMS WITH THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTION 33-10-105, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-10-105, MCA, is amended to read:

“33-10-105. General powers and duties. (1) *The Subject to subsection (2), the association:*

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that is in excess of \$100 and is less than \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a), *including the department of labor and industry for workers' compensation claims;*

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) (a) *Except as provided in subsection (2)(b), a covered claim may not include a claim filed with the association or a liquidator for protection under the*

insured's policy for losses incurred but not reported and may not include a claim filed with the association after the earlier of:

(i) 36 months after the date of the order of liquidation; or

(ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) (i) If the claimant learns that the claimant's condition resulted from an occupational disease compensable under Title 39, chapter 72, within 36 months of the order of liquidation or the final date set by the court for the filing of claims against the liquidator, the claimant shall file a claim, which must be paid under the terms of subsection (1)(a). If the claimant does not learn of a compensable condition under Title 39, chapter 72, until after the time specified in either subsection (1)(a)(i) or (1)(a)(ii) has expired, the claimant shall file a claim with the association within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.

(ii) Notice by a claimant or insurer to the department of labor and industry of a workers' compensation claim pursuant to Title 39, chapter 71, or an occupational disease claim pursuant to Title 39, chapter 72, constitutes notice to the liquidator for the purposes of workers' compensation or occupational disease claims.

~~(2)~~(3) The association may:

(a) employ or retain persons ~~as are~~ necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts ~~as are~~ necessary to carry out the purpose of this part;

(e) perform other acts ~~as are~~ necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year."

Section 2. Applicability. [This act] applies to all liquidations commenced on or after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 196

[HB 660]

AN ACT REQUIRING A MINIMUM OF A 30-HOUR NOTIFICATION BY A CLERK OF THE SCHOOL DISTRICT TO COUNTY TREASURERS FOR CASH DEMANDS TO MEET WARRANTS IN EXCESS OF \$50,000; REQUIRING THE ASSESSMENT OF A FEE FOR SCHOOL DISTRICTS FAILING TO MEET THE NOTIFICATION DEADLINES; AND AMENDING SECTIONS 20-3-325 AND 20-9-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-325, MCA, is amended to read:

“20-3-325. Clerk of the district. (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees ~~shall~~ *must* have one of their members or a district employee act as clerk for the meeting, and ~~such that~~ *that* person shall supply the clerk with a certified copy of the proceedings. The clerk of the district ~~also shall~~ *must* be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

~~(1)(a)~~ (a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

~~(2)(b)~~ (b) prepare the annual trustees’ report required under the provisions of 20-9-213.

(2) *The clerk of the district shall provide the county treasurer with a minimum of 30 hours’ notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000. If the clerk of the district fails to provide the required 30-hour notice, the district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.”*

Section 2. Section 20-9-212, MCA, is amended to read:

“20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. *Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.* Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7), in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Approved April 8, 2005

CHAPTER NO. 197

[HB 702]

AN ACT PROVIDING THAT AN OUTFITTER'S LICENSE MAY NOT BE TRANSFERRED; EXPANDING BEYOND FAMILY MEMBERS THOSE WHO MAY CONTINUE THE BUSINESS OF A DECEASED OUTFITTER; CLARIFYING THE ONE-LICENSE LIMIT FOR OUTFITTERS; AND AMENDING SECTIONS 37-47-310 AND 37-47-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-310, MCA, is amended to read:

“37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred ~~during any license year~~.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, ~~an immediate member of a person designated by~~ the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate ~~sells~~ *sell* the outfitting business or ~~obtains~~ *obtain* relicensure of the business.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that ~~a~~ *no* property right ~~attaches~~ *does not attach* to the transferred river-use days.”

Section 2. Section 37-47-311, MCA, is amended to read:

“37-47-311. Limit one license. ~~No~~ *An individual person* may not hold more than one outfitter's license either for ~~his~~ *the individual's* own benefit or for the use and benefit of a partnership, *limited liability partnership, limited liability company,* or corporation. ~~nor may the~~ *However, the name of any a* partnership, *limited liability partnership, limited liability company,* or corporation *may* appear on more than one current outfitter's license *and within more than one operation plan filed with the board.*”

Approved April 6, 2005

CHAPTER NO. 198

[HB 743]

AN ACT PROVIDING A LEGISLATIVE FINDING THAT IT IS WITHIN A LOCAL GOVERNMENT'S AUTHORITY TO ENTER INTO CERTAIN CONTRACTS; AND REPEALING SECTION 7-32-4139, MCA.

WHEREAS, in 1999, the Legislature enacted Chapter 337, Laws of 1999, providing for reimbursement of training expenses for a police officer to a city or town if the officer leaves employment within 36 months of service; and

WHEREAS, in the 2005 Legislative Session, the same protection for counties regarding the training costs of Deputy Sheriffs is being sought in House Bill No. 19; and

WHEREAS, the House Standing Committee on Local Government seeks to make a finding that the ability to include these provisions in any employment contract is within the contract authority granted to local governments and statutory authorization is unnecessary.

Be it enacted by the Legislature of the State of Montana:

Section 1. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-2101 states that a county has the powers specified in this title or in special statutes and has powers that are necessarily implied from those expressed powers.

(4) Section 7-1-2103 states that a county has the power to make contracts that may be necessary to the exercise of its powers.

(5) Section 7-1-2104 states that a county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

(6) Therefore, the legislature finds that it is within a county's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the county be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

Section 2. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-4124 states that a municipality with general powers has the power, subject to the provisions of state law, to contract with persons and to hire, direct, and discharge employees.

(4) Therefore, the legislature finds that it is within a local government's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the local government be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

Section 3. Repealer. Section 7-32-4139, MCA, is repealed.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions of Title 7, chapter 1, part 41, apply to [section 2].

Approved April 8, 2005

CHAPTER NO. 199

[HB 709]

AN ACT REVISING THE LAWS GOVERNING THE CHIROPRACTIC LEGAL PANEL; CLARIFYING THE STATUS OF THE PANEL AS A QUASI-GOVERNMENTAL ENTITY; REVISING THE SELECTION PROCEDURE FOR THE PANEL; REVISING THE FILING REQUIREMENTS FOR DECISIONS OF THE PANEL; AMENDING SECTIONS 27-12-104, 27-12-402, AND 27-12-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-12-104, MCA, is amended to read:

“27-12-104. Creation of panel. There is a Montana chiropractic legal panel. The panel *is a quasi-governmental entity and* is allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply. *The only state laws applicable to the panel are those contained in this chapter and those laws specifically made applicable to the panel.*”

Section 2. Section 27-12-402, MCA, is amended to read:

“27-12-402. Selection of panelists. ~~(1) The director shall promptly transmit an application submitted under 27-12-301 to the directors of the chiropractic physician’s state professional society or association board of chiropractors and the director of the state bar of Montana shall each annually transmit a list of licensees to the director of the panel. Within 14 days from the date of transmittal of the application a list, the director of the professional society or association and the state bar of Montana shall each select 12 proposed panelists from the list, which the~~ The director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.

~~(2) If no state professional society or association exists or if the chiropractic physician does not belong to such a society or association, the director shall transmit the application to the chiropractic physician’s state licensing board and the licensing board shall select 12 proposed panelists from the chiropractic physician’s profession and, when applicable, from persons specializing in the same field or discipline as the chiropractic physician.”~~

Section 3. Section 27-12-605, MCA, is amended to read:

“27-12-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. A copy of the decision must be:

- (1) given to the parties and their attorneys; *and*
- (2) retained in the permanent files of the panel; ~~and~~
- ~~(3) given to the chiropractic physician’s professional licensing board.”~~

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 200

[SB 42]

AN ACT CLARIFYING AND RECONCILING THE DUTIES OF THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE AND A SERVICE AREA AUTHORITY BOARD FOR THE DEVELOPMENT OF POLICIES, PLANS, AND BUDGETS FOR THE DELIVERY OF MENTAL HEALTH SERVICES TO CHILDREN; AND AMENDING SECTIONS 52-2-304 AND 53-21-1006, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care; ~~and~~

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care in the initiative; *and*

(g) *take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.*

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; ~~and~~

(v) a local citizen review board as provided for in 41-3-1003; *and*

(vi) *a local advisory council as provided for in 53-21-702.*

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 2. Section 53-21-1006, MCA, is amended to read:

"53-21-1006. Service area authorities — leadership committees — boards — plans. (1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for persons with mental illness, advocates, family members of persons with mental illness, mental health professionals, county commissioners, and other interested community members.

(2) The leadership committee within each service area must include but is not limited to a significant portion of consumers of services for persons with mental illness, family members of persons with mental illness, and a mental health services provider. The department shall provide assistance for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's functions and method of appointment. The bylaws must be submitted to the department for review.

(4) The service area authority board must be established under Title 35, chapter 2. Upon incorporation, the board may enter into contracts with the

department to carry out the comprehensive plan for mental health for that service area. Nonprofit corporations incorporated for the purposes of this part may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

(a) shall define the operation and management of the service area mental health system, including:

- (i) provider contracting;
- (ii) quality and outcome management;
- (iii) service planning;
- (iv) utilization management and review;
- (v) preadmission screening and discharge planning;
- (vi) consumer advocacy and family education and rights protection;
- (vii) infrastructure;
- (viii) information system requirements; and
- (ix) procurement processes;

(b) shall submit a biennial review and evaluation of mental health service needs and services within the service area;

(c) shall keep all records of the board and make reports required by the department;

(d) shall prepare and submit a plan and budget proposal to support mental health services for ~~children and~~ adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area;

(e) may receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of this part.

(f) shall reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board; ~~and~~

(g) shall either include a county commissioner or work closely with county commissioners in the service area; *and*

(h) shall take into consideration the policies, plans, and budget developed by the children's system of care planning committee provided for in 52-2-303.

(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4-year transition plan, subject to approval of the federal waivers as provided for in section 15, Chapter 602, Laws of 2003.

(7) A service area authority may not directly provide mental health services."

Approved April 8, 2005

CHAPTER NO. 201

[SB 103]

AN ACT PROVIDING THAT INTERNET GAMBLING IS AN ILLEGAL GAMBLING ENTERPRISE EXCEPT AS SPECIFICALLY AUTHORIZED BY MONTANA LAW; DEFINING THE TERM AND PROVIDING EXCEPTIONS; AND AMENDING SECTION 23-5-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

“23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) “Applicant” means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) “Application” means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) “Authorized equipment” means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) “Bingo” means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) “Bingo caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) “Card game table” or “table” means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) “Card game tournament” means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

(9) “Department” means the department of justice.

(10) “Distributor” means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) “Gambling” or “gambling activity” means risking *any* money, credit, deposit, check, property, or ~~any~~ other thing of value for a gain that is contingent

in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(a)(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

~~(b)(ii)~~ a promotional game of chance; or

~~(c)(iii)~~ an amusement game regulated under *Title 23*, chapter 6 of this title.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under *Title 23*, chapter 7, of this title or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in *Title 23*, chapter 4, of this title and parts 2, 5, and 8 of this chapter; and

(d) credit gambling; *and*

(e) internet gambling.

(18) (a) *“Internet gambling”, by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.*

(b) *The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.*

~~(18)~~(19) “Keno” means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(19)~~(20) “Keno caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(20)~~(21) “License” means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(21)~~(22) “Licensee” means a person who has received a license from the department.

~~(22)~~(23) “Live card game” or “card game” means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(23)~~(24) (a) “Lottery” means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7 ~~of this title.~~

~~(24)~~(25) “Manufacturer” means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

~~(25)~~(26) “Nonprofit organization” means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans’, fraternal, beneficial, civic, senior citizens’, or service organization established for purposes other than to conduct a gambling activity.

~~(26)~~(27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public; a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(27)~~(28) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(28)~~(29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(29)~~(30) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(30)~~(31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(31)~~(32) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(32)~~(33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(33)~~(34) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

~~(34)~~(35) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(35)~~(36) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin,

currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36)(37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Approved April 8, 2005

CHAPTER NO. 202

[SB 105]

AN ACT EXPANDING THE TYPES OF LICENSED HEALTH CARE PROFESSIONALS THAT ARE REQUIRED FOR RINGSIDE ATTENDANCE AT A BOXING OR WRESTLING EVENT; AMENDING SECTION 23-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

- (i) the labeling of a match as a championship match;
- (ii) the number and length of rounds and the weight of gloves;
- (iii) the extent and timing of the physical examination of contestants;
- (iv) the attendance of a referee and the referee's powers and duties; and
- (v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing and wrestling organizations ~~and~~;

(b) provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants-
~~The rules must;~~

(c) require a physical examination of each contestant prior to each match or exhibition ~~and the attendance of a licensed physician at ringside and must;~~

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; ~~and~~

(e) *provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:*

(i) *a licensed physician as defined in 37-3-102;*

(ii) *a licensed physician assistant-certified as defined in 37-20-401; or*

(iii) *a licensed advanced practice registered nurse as defined in 37-8-102."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 203

[SB 129]

AN ACT REVISING LAWS RELATING TO THE CREATION, CONSOLIDATION, AND FUNDING OF PUBLIC LIBRARIES AND PUBLIC LIBRARY DISTRICTS; ESTABLISHING A LIBRARY DEPRECIATION RESERVE FUND; AND AMENDING SECTIONS 22-1-326, 22-1-327, 22-1-330, 22-1-702, 22-1-705, AND 22-1-707, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-326, MCA, is amended to read:

"22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries *and public library districts created and operated under part 7 of this chapter*. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries *and public library districts*;

(b) augment and extend services provided by public libraries *and public library districts*; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries *or public library districts*. The commission may withhold a distribution to a library *or district* that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if ~~such a~~ *the* decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329."

Section 2. Section 22-1-327, MCA, is amended to read:

"22-1-327. State aid — per capita — per square mile. The commission shall distribute grants to public libraries *and public library districts* on a per capita and per square mile basis."

Section 3. Section 22-1-330, MCA, is amended to read:

"22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries *and public library districts* on a per capita and per square mile basis;

- (2) issuance of state multilibrary cards;
- (3) reimbursement for interlibrary loan lending;
- (4) distribution of base grants provided for in 22-1-331; and
- (5) the composition of the library federation board of trustees, as provided in 22-1-404.”

Section 4. Section 22-1-702, MCA, is amended to read:

“22-1-702. Creation or enlargement of public library district. (1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a district.

(2) The petition must contain:

(a) the boundaries of the proposed public library district;

(b) a map showing the boundaries;

(c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(d) the proposed number of members on the board of trustees. The number of members must be five or seven.

(3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.

(4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.

(6) At a hearing on the proposed public library district, the county governing body shall hear testimony:

(a) of all interested persons on whether a district should be created;

(b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and

(c) on any other matter relating to the petition.

(7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:

(a) set the boundaries of the proposed district;

(b) set the maximum mill levy for the proposed district;

(c) set the number of members to be on the board of trustees; and

(d) call for an election on the question of whether to create the district. The election may be:

(i) held in conjunction with a regular or primary election; or

(ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.

~~(8) Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library."~~

Section 5. Section 22-1-705, MCA, is amended to read:

"22-1-705. Consolidation of existing public libraries ~~or~~ and public library districts. (1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, *the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the library is included in the district boundaries. The governing body of the city or county that established the public library shall hold a public hearing on the question of whether the territory served by the library should be included in the district. If the governing body determines that the territory served by the public library may should be consolidated into the district, upon the adoption of it shall adopt a resolution, following a the public hearing, by the governing body of the city or county that established the public library to that effect and by the board of trustees of the district. If the governing body of the city or county that established the public library determines that the territory served by the library should not be included in the district, it shall adopt a resolution to that effect and the boundaries of the district must be adjusted to exclude the territory served by the public library.*

(b) Any existing bonded indebtedness against the territory served by the public library *or the library district* remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of 22-1-706."

Section 6. Section 22-1-707, MCA, is amended to read:

"22-1-707. Duties and powers of board of trustees. (1) The board of trustees of a public library district shall:

(a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;

(b) prepare annual budgets as required by the county governing body or bodies;

(c) pay necessary expenses of district staff members when on business of the district; and

(d) prepare and submit any records required by the Montana state library.

(2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:

(a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or

(ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;

(b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

(c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district *and may own and hold title to the buildings and facilities* and equip, operate, and maintain the buildings and facilities; or

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

(d) adopt by resolution, bylaws and rules for the operation and administration of the district;

(e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;

(f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;

(g) accept donations and devises of money or personal property; ~~and~~

(h) establish a library depreciation reserve fund as authorized and described in [sections 7 through 9]; and

~~(i)~~ (i) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.”

Section 7. Library depreciation reserve fund authorized. The trustees of a public library district may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve district library services.

Section 8. Money for library depreciation reserve fund. Money for the library depreciation reserve fund is those funds that have been allocated for district library services in any year but which have not been expended by the end of the year. The money includes but is not limited to county appropriations, federal reserve sharing funds, and public and private grants.

Section 9. Investment of library depreciation reserve fund. The money held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

Section 10. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 22, chapter 1, part 7, and the provisions of Title 22, chapter 1, part 7, apply to [sections 7 through 9].

Approved April 8, 2005

CHAPTER NO. 204

[SB 130]

AN ACT REQUIRING THE TRANSFER OF INTEREST EARNED ON THE MICROBUSINESS DEVELOPMENT LOAN ACCOUNT TO THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; REQUIRING THE RETENTION OF INTEREST EARNED BY THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; AMENDING SECTION 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-407, MCA, is amended to read:

“17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) (a) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, and money received in repayment of the principal of development loans must be deposited.

(b) The department may make development loans from the account to a certified microbusiness development corporation.

(c) *Interest earned on the account must be deposited in the microbusiness finance program administrative account established in subsection (2).*

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations; ~~and~~

(c) grants, donations, and private or public income; *and*

(d) *all interest earned on money in the account and interest earned on money in the account provided for in subsection (1)(a).*

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with ~~its~~ a plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with ~~its~~ a plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed \$35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed \$35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed \$35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed \$35,000.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least \$1 from other sources for each \$6 from the program. These

contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department *and* that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 205

[SB 134]

AN ACT CLARIFYING APPLICATION OF TITLE 33, MCA, STATUTES TO CAPTIVE INSURANCE COMPANIES REGARDING VOLUNTARY DISSOLUTIONS AND LIMITS ON AGGREGATE PREMIUM TAXES AND CERTAIN OTHER TAXES; CLARIFYING THAT RISK RETENTION GROUP STATUTES APPLY TO CERTAIN CAPTIVE INSURERS; AND AMENDING SECTIONS 33-28-105, 33-28-201, AND 33-28-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft articles of incorporation, the commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company formed as a corporation has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(9) Except as provided in 33-28-306, the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, *voluntary dissolutions*, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 2. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company ~~in this state~~ during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

- (i) 0.4% on the first ~~20~~ \$20 million ~~dollars~~;
- (ii) 0.3% on the next ~~20~~ \$20 million ~~dollars~~;
- (iii) 0.2% on the next ~~20~~ \$20 million ~~dollars~~; and
- (iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the

parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first ~~20~~ \$20 million ~~dollars~~ of assumed reinsurance premiums;

(ii) 0.150% on the next ~~20~~ \$20 million ~~dollars~~ of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(b) *Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.*

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section."

Section 3. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) *The following apply to captive insurance companies:*

(a) definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) *the limitation provided in 33-2-705 on the imposition of other taxes;*

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13; and

(d) the provisions of 33-18-201, 33-18-203, 33-18-205, and 33-18-242 ~~apply to captive insurance companies.~~

(2) This chapter may not be construed as exempting:

(a) a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance; or

(b) *a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 11.*

(3) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Approved April 8, 2005

CHAPTER NO. 206

[SB 135]

AN ACT INCREASING THE PENALTY FOR KNOWINGLY FILING FALSE INFORMATION ON CERTAIN STATEMENTS FILED WITH THE STATE AUDITOR'S OFFICE; AMENDING SECTION 33-2-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-701, MCA, is amended to read:

"33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) (a) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and context as:

- (i) is required or not disapproved by the commissioner; ~~as~~;
 - (ii) is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon; ~~and as~~
 - (iii) supplemented for additional information required by the commissioner.
- (b) The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners.
- (c) The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves.
- (d) The statement must be verified by the oath of the insurer's president or vice president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic versions of ~~its~~ *the insurer's* annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for the submission of the quarterly statement electronic filings are as follows:

- (i) the first quarter filing is due May 15;
 - (ii) the second quarter filing is due August 15; and
 - (iii) the third quarter filing is due November 15.
- (b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.
- (3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for renewal of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file ~~its~~ *the insurer's*

annual statement when due or within an extension of time that the commissioner may grant.

(5) A director, officer, ~~insurance producer~~ *agent*, or employee of a company who subscribes to, makes, or concurs in making or publishing an annual statement or any other statement required by law knowing that the statement contains any material statement that is false shall be punished by a fine of not more than ~~\$1,000~~ *\$25,000 for each violation*.

(6) The commissioner may impose a fine not to exceed \$100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of \$1,000."

Section 2. Effective date — applicability. [This act] is effective July 1, 2005, and applies to all filings due on or after July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 207

[SB 136]

AN ACT REQUIRING THE SECRETARY OF STATE TO MAINTAIN A CENTRAL FILING SYSTEM FOR CERTAIN AGRICULTURAL LIENS THAT MEETS THE REQUIREMENTS OF FEDERAL LAW TO PROTECT PURCHASERS OF FARM PRODUCTS; DESIGNATING THE SECRETARY OF STATE'S OFFICE AS THE APPROPRIATE OFFICE IN WHICH TO FILE AN EFFECTIVE FINANCING STATEMENT FOR THE PURPOSES OF CERTAIN AGRICULTURAL LIENS; AND AMENDING SECTIONS 2-15-401, 30-9A-302, AND 30-9A-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state — authority. (1) In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to do the same;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application;

(n) *establish and maintain a central filing system that complies with the requirements of a central filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7 U.S.C. 1631.*

(2) The secretary of state may develop and implement a statewide electronic filing system as described in 2-15-404."

Section 2. Section 30-9A-302, MCA, is amended to read:

"30-9A-302. Law governing perfection and priority of agricultural liens. ~~While~~ *Subject to the provisions of 30-9A-501, while* farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products."

Section 3. Section 30-9A-501, MCA, is amended to read:

"30-9A-501. Filing office. (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) The office in which a financial institution must file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state.”

Approved April 8, 2005

CHAPTER NO. 208

[SB 152]

AN ACT DEFINING “BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS” AS REQUIRED BY ARTICLE X, SECTION 1(3), OF THE MONTANA CONSTITUTION; IDENTIFYING THE EDUCATIONALLY RELEVANT FACTORS ON WHICH THE BASIC SYSTEM IS ESTABLISHED; PROVIDING DEFINITIONS; PROVIDING A STATEMENT OF LEGISLATIVE GOALS FOR PUBLIC SCHOOLS; REQUIRING THE BOARD OF PUBLIC EDUCATION TO SUBMIT NEW OR PROPOSED AMENDMENTS TO ACCREDITATION STANDARDS TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE FOR REVIEW AND FOR A DETERMINATION OF FISCAL IMPACT FOR INCLUSION IN THE EXECUTIVE BUDGET; REQUIRING THE LEGISLATURE TO DETERMINE THE COSTS OF THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; REQUIRING THAT THE LEGISLATURE AUTHORIZE A STUDY AT LEAST EVERY 10 YEARS TO REASSESS THE EDUCATIONAL NEEDS AND COSTS RELATED TO THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND INCORPORATE THE RESULTS OF THOSE REASSESSMENTS INTO THE STATE’S FUNDING FORMULA IF NECESSARY; AMENDING SECTIONS 20-1-101, 20-7-101, AND 20-9-303, MCA; REPEALING SECTIONS 20-2-115 AND 20-9-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative goals for public elementary and secondary schools. It is the goal of the legislature that Montana’s public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

- (1) furthers the ability to reason critically and creatively;
- (2) fosters the ability to effectively communicate ideas, knowledge, and thoughts;
- (3) develops a sense of personal and civic responsibility;
- (4) develops a strong work ethic, postsecondary readiness, and employment skills; and
- (5) encourages a healthy lifestyle.

Section 2. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review. (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a “basic system of free quality public elementary and secondary schools” means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);

(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

(a) the number of students in a district;

(b) the needs of isolated schools with low population density;

(c) the needs of urban schools with high population density;

(d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;

(e) the needs of American Indian students; and

(f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) By July 1, 2007, the legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years following [the effective date of this act], the legislature shall:

(a) authorize a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, incorporate the results of those assessments into the state's funding formula.

Section 3. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) *"Accreditation standards" means the body of administrative rules governing standards such as:*

(a) school leadership;

(b) educational opportunity;

(c) academic requirements;

(d) program area standards;

(e) content and performance standards;

(f) school facilities and records;

(g) student assessment; and

(h) general provisions.

~~(1)~~(2) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(3) *"At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.*

~~(2)~~(4) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

~~(3)~~(5) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

~~(4)~~(6) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

~~(5)~~(7) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

~~(6)~~(8) "County superintendent" means the county government official who is the school officer of the county.

~~(7)~~(9) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(10)(a) *"Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.*

(b) *The term does not include an educational program or programs used in 20-4-121 and 20-25-803.*

~~(8)~~(11) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

~~(9)~~(12) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(13) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(14) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(15) *"Qualified and effective teacher or administrator" means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.*

~~(12)~~(16) "Regents" means the board of regents of higher education.

~~(13)~~(17) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(18) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(19) "State university" means Montana state university-Bozeman.

(20) "*Student with limited English proficiency*" means any student:

(a) (i) *who was not born in the United States or whose native language is a language other than English;*

(ii) *who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or*

(iii) *who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and*

(b) *whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:*

(i) *the ability to meet the state's proficiency assessments;*

(ii) *the ability to successfully achieve in classrooms where the language of instruction is English; or*

(iii) *the opportunity to participate fully in society.*

~~(16)~~(21) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(22) "System" means the Montana university system.

~~(18)~~(23) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(24) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(25) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(26) "Trustees" means the governing board of a district.

~~(22)~~(27) "University" means the university of Montana-Missoula.

~~(23)~~(28) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 4. Section 20-7-101, MCA, is amended to read:

“20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools ~~shall~~ *must* be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) *Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the education and local government interim committee for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.*

(3) *If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.*

~~(2)(4)~~ Standards for the retention of school records must be as provided in 20-1-212.”

Section 5. Section 20-9-303, MCA, is amended to read:

“20-9-303. Nonisolated school BASE budget funding — special education funds. (1) An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in ~~20-9-307 and~~ 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district’s ensuing year’s allowable cost payment for special education.”

Section 6. Repealer. Sections 20-2-115 and 20-9-307, MCA, are repealed.

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 and 2].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 209

[SB 162]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE BONDING OF COUNTY OFFICIALS AND EMPLOYEES AND CITY OR TOWN OFFICERS AND EMPLOYEES; EXEMPTING COUNTY AND MUNICIPAL OFFICERS FROM THE GENERAL PROVISIONS RELATED TO OFFICIAL BONDS; REMOVING THE REQUIREMENT THAT BONDS BE APPROVED BY THE COUNTY ATTORNEY OR CITY OR TOWN ATTORNEY AND FILED WITH THE COUNTY CLERK AND RECORDER OR CITY OR TOWN CLERK; REMOVING THE REQUIREMENT THAT GROUP BONDS COMPLY WITH CERTAIN CONDITIONS; REMOVING THE REQUIREMENT THAT BONDS BE PURCHASED THROUGH A COMPETITIVE BID PROCESS; ALLOWING A SELF-INSURANCE PLAN TO PROVIDE THE BONDS; PROHIBITING A LOCAL GOVERNMENT OFFICIAL FROM COLLECTING ON THE OFFICIAL'S BOND IF THE OFFICIAL OVERSPENDS THE APPROPRIATION FOR A FUND; REMOVING THE BONDING PROVISIONS RELATED SPECIFICALLY TO A SHERIFF; AMENDING SECTIONS 2-9-501, 2-9-701, 2-9-703, 2-9-803, 2-9-804, AND 7-6-4005, MCA; REPEALING SECTION 2-9-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-501, MCA, is amended to read:

“2-9-501. Application — ~~state official and employee bonds excepted.~~

The provisions of this part apply to ~~the bonds of county, town, or township officers~~; the official bond of any executor, administrator, or guardian; or to the bond or undertaking of any person ~~where~~ *when* by law a bond or undertaking is required, except *county, town, or township officers and* state officers and employees.”

Section 2. Section 2-9-701, MCA, is amended to read:

“2-9-701. County officers and employees to be bonded — ~~form — conditions of group bonds.~~ (1) All elected and appointed county officers and employees ~~shall~~ *must* be bonded *for the faithful performance of all official duties required by law*.

~~(2) The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.~~

~~(3)~~(2) A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees or any group or combination of county officers and employees.

~~(4) All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer or employee.~~

Section 3. Section 2-9-703, MCA, is amended to read:

“2-9-703. Purchase. (1) The board of county commissioners shall purchase all surety bonds for county officers and employees.

~~(2) The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.~~

~~(2)~~(2) Bonds purchased by the board of county commissioners ~~shall~~ *must* be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state *or by a self-insurance pool insuring counties as authorized by 2-9-211.*

Section 4. Section 2-9-803, MCA, is amended to read:

~~“2-9-803. Form — coverage — approval City and town officers and employees to be bonded.~~ (1) A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees or any group or combination of officers and employees.

(2) ~~All official bonds covering a group of elected and appointed city or town officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer and employee must be bonded for the faithful performance of all official duties required by law.~~

~~(3) The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.”~~

Section 5. Section 2-9-804, MCA, is amended to read:

“2-9-804. Purchase — responsible surety. (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) Bonds purchased by the city or town council or commission must be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state *or by a self-insurance pool insuring cities or towns as authorized under 2-9-211.*

Section 6. Section 7-6-4005, MCA, is amended to read:

“7-6-4005. Expenditures limited to appropriations. (1) Local government officials may not make a disbursement or an expenditure or incur an obligation in excess of the total appropriations for a fund.

(2) A local government official who violates subsection (1) is liable for the amount of the excess disbursement, expenditure, or obligation personally ~~and upon the official's bond.~~

(3) The subsequent claims approval process may not be considered as the making of a disbursement or an expenditure or as incurring an obligation and does not otherwise limit or mitigate the local government official's personal liability.”

Section 7. Repealer. Section 2-9-711, MCA, is repealed.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2005

CHAPTER NO. 210

[SB 165]

AN ACT REVISING CONSUMER LOAN LAWS; PROVIDING THAT A CONSUMER OF A DEFERRED DEPOSIT LOAN OR A TITLE LOAN HAS THE RIGHT TO RESCISSION THROUGH THE FIRST BUSINESS DAY FOLLOWING THE EXECUTION OF THE LOAN AGREEMENT; ALLOWING ARBITRATION CLAUSES IN LOAN AGREEMENTS; ESTABLISHING

FAIRNESS STANDARDS FOR MANDATORY ARBITRATION CLAUSES IN DEFERRED DEPOSIT LOAN AND TITLE LOAN AGREEMENTS; AND AMENDING SECTIONS 31-1-715, 31-1-723, AND 31-1-816, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-715, MCA, is amended to read:

“31-1-715. Loan requirements — *right of rescission* — *arbitration*. (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) *The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee’s first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.*

(b) *A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).*

(c) *Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.*

(6) (a) *A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer’s rights.*

(b) *A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).*

~~(5)~~(7) Only the licensee may make an electronic deduction from the consumer’s account. The licensee shall ensure that information obtained from the consumer about the consumer’s account remains confidential.

~~(6)~~(8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

~~(7)~~(9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.”

Section 2. Section 31-1-723, MCA, is amended to read:

“31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;

(5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;

(6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

(7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

(8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

(9) charging to cash a check representing the proceeds of the deferred deposit loan;

(10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;

(11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;

(13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

(14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

(15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

(16) accepting any collateral for a deferred deposit loan;

(17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

(18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

(19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(20) including any of the following provisions in the loan agreement required by 31-1-721:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

~~(d) a mandatory arbitration clause;~~

~~(e)~~(d) any assignment of or order for payment of wages or other compensation for services;

~~(f)~~(e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

~~(g)~~(f) a waiver of any provision of this part.”

Section 3. Section 31-1-816, MCA, is amended to read:

“31-1-816. Title loan requirements — liability of borrower — right of rescission — arbitration. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(ii) *the borrower may rescind the transaction if, by 5 p.m. of the title lender’s first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.*

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) *A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.*

(b) *A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a)."*

Approved April 8, 2005

CHAPTER NO. 211

[SB 178]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE PERMITS AND ADOPT RULES FOR THE USE OF AIRCRAFT BY LANDOWNERS TO PROTECT THEIR PROPERTY BY DRIVING, HERDING, OR HAZING GAME ANIMALS; AMENDING

SECTION 87-3-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-126, MCA, is amended to read:

“87-3-126. Restrictions on use of aircraft or boats — exception — authority to issue permits and adopt rules. (1) (a) ~~No~~ A game bird or game or fur-bearing animal may not be killed, taken, or shot at from any aircraft, including helicopters; ~~nor may any.~~

(b) An aircraft or helicopter may not be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals; ~~nor may any.~~

(c) A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail may not be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

(2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location thereof of the game or fur-bearing animals to any person on the ground by means of any air-to-ground communication signal or other device whatsoever as an aid to hunting or pursuing wildlife.

(3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports which that have been established on private property or which that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:

(a) during emergency situations;

(b) or when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(4) An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for such activity.”

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 212

[SB 254]

AN ACT UPDATING SERVICE CREDIT ELIGIBILITY REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS; AND AMENDING SECTION 19-17-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-108, MCA, is amended to read:

“19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor; *and*

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, *rents, or uses* one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; ~~and~~

~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.”~~

Approved April 8, 2005

CHAPTER NO. 213

[SB 316]

AN ACT REQUIRING EACH MEDICAL MALPRACTICE INSURER TO INCLUDE CERTAIN INFORMATION, BASED UPON THE INSURER'S EXPERIENCE IN THIS STATE, IN ITS ANNUAL STATEMENT TO THE COMMISSIONER OF INSURANCE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medical malpractice insurance report by insurer. (1) Each insurer engaged in issuing medical malpractice professional liability insurance in this state shall include the following, by profession and based upon the

insurer's experience in this state, in its annual statement to the commissioner of insurance:

(a) the number of medical malpractice insureds as of December 31 of the preceding calendar year;

(b) the amount of direct premiums written and direct premiums paid for medical malpractice insurance during the preceding calendar year;

(c) the number of medical malpractice claims made against its insureds during the preceding calendar year;

(d) the number of medical malpractice claims that were closed and that had a direct loss paid during the preceding calendar year, together with the total amount of direct losses paid for all closed claims for that year;

(e) the number of medical malpractice claims that were still open and had no direct losses paid as of December 31 of the preceding calendar year;

(f) the number of claims filed against its insureds in state and federal courts during the preceding calendar year, including the number of claims that were closed:

(i) without settlement during the preceding calendar year;

(ii) with a settlement during the preceding calendar year and the total amount paid for those claims;

(iii) during the preceding calendar year and that went to trial and the number that resulted in a judgment or verdict for the plaintiff, the number that resulted in a judgment or verdict for the insured, and the number that resulted in some other judgment or verdict;

(g) the total direct losses paid for claims against its medical malpractice insureds that went to trial and were closed during the preceding year; and

(h) other information and statistics that the commissioner of insurance requires.

(2) For purposes of this section:

(a) "insurer" has the meaning provided in 33-1-201; and

(b) "profession" includes the categories of physician, osteopath, podiatrist, dentist, optometrist, registered nurse, licensed practical nurse, or health care facility as defined in 50-5-101.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 23, part 3, and the provisions of Title 33, chapter 23, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 214

[SB 317]

AN ACT REGULATING THE CONVERSION OF A NONPROFIT HEALTH ENTITY TO A FOR-PROFIT CORPORATION OR ENTITY OR A MUTUAL BENEFIT CORPORATION OR ENTITY; PROVIDING DEFINITIONS; PROVIDING FOR APPROVAL BY THE ATTORNEY GENERAL AND THE

STATE AUDITOR; PROVIDING CRITERIA FOR APPROVAL; PROVIDING FOR PUBLIC RECORDS, NOTICE, AND HEARING; PROVIDING FOR EXPERTS AND COSTS; PROVIDING PROCEDURES AND RULEMAKING AUTHORITY; PROVIDING FOR DISTRIBUTION OF PROCEEDS OF A CONVERSION TRANSACTION; AMENDING SECTIONS 35-2-609, 35-2-617, AND 35-2-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 18], the following definitions apply:

(1) "Commissioner" means the Montana state auditor and ex officio commissioner of insurance provided for in 2-15-1903.

(2) "Control or governance" means the possession, indirect or direct, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is solely the result of an official position with a corporate office held by the person.

(3) (a) "Conversion" or "conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, optioning, conveyance, merger, affiliation, mutualization, joint venture, or other disposition by a nonprofit health entity or another person or entity resulting in the transfer of control or governance to a person or entity other than the nonprofit health entity of the lesser of:

(i) more than 10% in fair market value of the assets or operations of a nonprofit health entity; or

(ii) assets of a nonprofit health entity amounting to a fair market value of \$5 million or more.

(b) A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a series of related transactions. In determining the value of a tangible asset under this definition, the value of the asset must be calculated net of any mortgage, lien, or other encumbrance on the asset that exists of record.

(c) The term does not include:

(i) a transaction in the ordinary course of the nonprofit health entity's business that does not result in a material change in the nonprofit health entity's ownership, management structure, or nonprofit corporate mission;

(ii) a transaction or series of transactions in the ordinary course of a nonprofit health entity's business if the effect of the transaction or series of transactions is not to convert the nonprofit health entity from a nonprofit to a for-profit entity, to transfer the nonprofit health entity's business or operations to a for-profit entity, or to transfer the control or benefit of public assets and the proceeds of public assets to a mutual benefit or for-profit entity;

(iii) awards, grants, or payments to or on behalf of intended members or beneficiaries, consistent with the lawful purposes of a nonprofit health entity;

(iv) a change in the membership of the board of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity if the change in membership does not result in a change in the nonprofit

corporate status of the nonprofit health entity, does not result from a transfer of control, governance, or ownership of the nonprofit health entity, and does not result from transfer of a power of appointment of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(v) settlement, satisfaction, or payment of a claim or suit against or debt of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity incurred in the ordinary course of business;

(vi) execution of a promissory note, guaranty, or other evidence of indebtedness for the amount of a loan, the proceeds of which are paid solely to the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(vii) any payment, transfer, or other transaction required by law or by order of any authorized administrative officer or agency, including but not limited to payment of taxes, fees, fines, penalties, or other assessments to a government or a nonprofit health entity or a transaction ordered by the commissioner or the attorney general;

(viii) purchases, sales, or transfers in the ordinary course of business for fair market value of cash or cash equivalents owned by the nonprofit health entity or any wholly owned subsidiary in exchange for goods, products, services, or an interest in property, including but not limited to stocks, shares, bonds, notes, evidences of indebtedness, negotiable instruments, or an ownership interest in an entity, to be held by the nonprofit health entity or its wholly owned subsidiary;

(ix) granting of an encumbrance in the ordinary course of business, such as a security interest or mortgage deed with respect to an asset owned by the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the nonprofit health entity or its wholly owned subsidiary, and a foreclosure or other exercise of remedies permitted with respect to an encumbrance;

(x) sale, investment, or transfer in the ordinary course of business for fair market value of an interest in property owned by the nonprofit health entity or a wholly owned subsidiary, the net proceeds of which are paid solely to the nonprofit health entity or its wholly owned subsidiary;

(xi) any transfer of assets between a nonprofit health entity that is a nonprofit public benefit corporation and a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations, provided that the management of all assets transferred by a nonprofit public benefit corporation in a transaction described in this subsection (3)(c)(xi) continue to be managed in a manner consistent with the public benefit purpose of the transferring nonprofit public benefit corporation; or

(xii) any other transaction or proposed transaction for fair market value if:

(A) the nonprofit health entity or its wholly owned subsidiary retains or will retain substantially the same degree of control, governance, or ownership of the proceeds of the transaction that the nonprofit health entity or its wholly owned subsidiary held in the assets or operations prior to the transaction or proposed transaction;

(B) the nonprofit health entity maintains its operations as a nonprofit health entity and public assets or the proceeds of public assets are maintained as public assets; and

(C) none of the assets or operations of the nonprofit health entity or its wholly owned subsidiary inure or will inure directly or indirectly to the benefit of any officer, director, trustee, or employee of the nonprofit health entity or its wholly owned subsidiary.

(4) "Fair market value" means the fair market value as of the date of the transaction or proposed transaction as determined by an independent appraisal of the assets or operations performed and communicated by a qualified appraiser according to applicable professional appraisal standards.

(5) "Health maintenance organization" has the meaning provided in 33-31-102.

(6) "Health service corporation" has the meaning provided in 33-30-101.

(7) (a) "Nonprofit health entity" means:

(i) a nonprofit health maintenance organization; or

(ii) a nonprofit health service corporation.

(b) The term includes any entities affiliated with a nonprofit health entity through ownership, governance, or membership, such as a holding company or subsidiary.

(8) "Ordinary course of business" means with respect to a transaction or disposition that the transaction comports with the usual and customary practices of the kind of business in which the nonprofit health entity is engaged.

(9) "Public assets" include:

(a) assets held for the benefit of the public or the community;

(b) assets in which the public has an ownership interest;

(c) assets owned by a governmental entity; and

(d) assets owned by a nonprofit corporation to the extent that the corporation holds assets in a charitable trust.

(10) "Transferee" means the person in a conversion transaction that receives the ownership or control of the nonprofit health entity that is the subject of the conversion transaction or of the nonprofit health entity's assets.

(11) "Transferor" means the nonprofit health entity that is the subject of the conversion transaction or the corporation that owns the nonprofit health entity that is the subject of the conversion transaction.

Section 2. Conversion transaction — approval. A person may not engage in a conversion transaction involving a nonprofit health entity unless the commissioner and the attorney general issue orders approving the conversion transaction.

Section 3. Rulemaking authority. The commissioner and the attorney general shall adopt rules to carry out [sections 1 through 18], including rules that:

(1) specify the form and content of the written notice, required documents, and supplemental information;

(2) develop procedures under which proprietary business information and trade secrets are protected from public disclosure for the purposes of [section 6] to the extent allowed by law; and

(3) establish hearing and appeal procedures.

Section 4. Rights and powers. (1) (a) [Sections 1 through 18] may not be construed to impair the rights and powers of a court or the attorney general with respect to the assets of any public benefit corporation, to any asset devoted to charity, or to a charitable trust as provided in Title 72, chapter 33, part 5.

(b) Filing of an application under [sections 1 through 18] satisfies any notice requirements under 35-2-609, 35-2-617, or 35-2-722.

(2) (a) (i) Nothing in [sections 1 through 18] precludes the attorney general, the commissioner, or a nonprofit health entity from filing an action in district court under Title 27, chapter 8, seeking a declaration that a nonprofit health entity transaction is or is not a conversion transaction as defined in [section 1] or a declaration of whether assets of a nonprofit health entity are or are not public assets as defined in [section 1]. No other declaratory relief may be sought in a court regarding any issue arising from a transaction that is or is alleged to be a conversion transaction under [sections 1 through 18], except that a transferor or transferee may file an action in district court seeking an injunction prohibiting the attorney general or commissioner from making an unlawful disclosure of trade secrets or proprietary or other confidential information.

(ii) In an action under this subsection (2) to determine whether assets of a nonprofit health entity are or are not public assets, the presumption in [section 13(3)] applies.

(b) The commissioner or the attorney general, or both, may contract with experts as reasonably necessary to bring or defend an action pursuant to this subsection (2) and the nonprofit health entity shall pay the costs reasonably incurred by the commissioner or the attorney general for the experts' services.

(c) In an action under this subsection (2), if the court finds that the transaction is a conversion transaction subject to [sections 1 through 18] and the transaction has not been completed, the court shall enter an injunction prohibiting any further actions to complete the transaction until it has been approved by the commissioner and attorney general under [section 2].

(d) In an action under this subsection (2), if the court finds that a completed transaction was a conversion transaction that the commissioner and attorney general have not approved under [section 2], the court shall enter an injunction requiring the nonprofit health entity or any successor to the assets involved in the transaction to submit an application for review under [section 5]. After reviewing any application submitted following a court order under this subsection (2)(d), the attorney general may direct that the nonprofit health entity or any successor to the assets involved in the transaction distribute the fair market value of any public assets involved in the transaction as required under [section 18].

(e) The court issuing the declaratory judgment retains jurisdiction to enforce any direction by the attorney general for distribution of the fair market value of public assets under this subsection (2).

(3) [Sections 1 through 18] may not be construed to make void or voidable or to require any distribution of assets with respect to any transaction or series of transactions completed before [the effective date of this act], even if that

transaction or series of transactions is considered as part of a conversion transaction completed on or after [the effective date of this act].

Section 5. Application process — content. (1) A person that seeks to engage in a conversion transaction for a nonprofit health entity and the nonprofit health entity shall submit an application to the commissioner and a copy of the application to the attorney general.

(2) The application submitted under subsection (1) is in addition to any other filing required by law.

(3) An application must include:

- (a) the name of the proposed transferor;
- (b) the name of the proposed transferee;
- (c) the names of any other parties to the conversion transaction agreement;
- (d) the terms of the proposed conversion transaction, including but not limited to a description and valuation of all consideration exchanges as a part of or as a result of the conversion and the extent to which the assets proposed to be converted are public assets;
- (e) a copy of the conversion transaction agreement;
- (f) a financial and community impact analysis report from an independent expert or consultant that addresses the criteria in [sections 13 through 15];
- (g) an independent valuation of the fair market value of the nonprofit health entity for a valuation date within 1 year prior to receipt by the nonprofit health entity or publication of a bona fide bid, offer, or letter of intent to acquire the nonprofit health entity; and
- (h) an antitrust analysis prepared by an appropriate expert.

Section 6. Public records. All documents and records, excluding any proprietary or confidential information as defined by law, submitted to the commissioner or attorney general by any person, including a nonprofit health entity making application under [section 5], in connection with the commissioner's and the attorney general's review of the proposed nonprofit health entity conversion transaction are public records to the extent required by the provisions of applicable state law. The contents of the application submitted to the commissioner pursuant to [section 5] are a public record, except that any proprietary information or trade secret that may by law be kept confidential is not a public record.

Section 7. Receiving an application — notice of application. (1) Within 15 working days after receiving an application for a conversion transaction, the commissioner shall:

- (a) publish notice of the application by the internet and by press release to the most widely circulated newspapers in a nonprofit health entity's service area; and
 - (b) maintain a list of, and notify by e-mail or first-class mail, any person that has requested in writing notice of the filing of an application.
- (2) The notice under subsection (1) must:
- (a) state that an application has been received;
 - (b) state the names of the parties to the conversion transaction;
 - (c) describe the contents of the application;

(d) state the date by which a person shall submit written comments on the application; and

(e) provide the date, time, and place of the public hearing on the conversion transaction.

Section 8. Public hearing. (1) As soon as practicable, but no later than 90 days after receiving a complete application for a conversion transaction, including all necessary expert reports, the commissioner or a designee shall hold a public hearing.

(2) Any person may file written comments and exhibits or make a statement at the public hearing.

Section 9. Procedures. (1) In the hearing required by [section 8], the commissioner and the attorney general shall agree on and jointly appoint a qualified person to preside over the hearing. The commissioner, the attorney general, the transferor, and the transferee may use discovery procedures as provided in Title 25, chapter 20. Except as otherwise specifically provided in this section, the procedures for conducting a contested case hearing, as provided in 2-4-611(3) and (4), 2-4-612 through 2-4-614, and 2-4-621 through 2-4-623, and the procedures for judicial review of contested case decisions under Title 2, chapter 4, part 7, apply.

(2) Notwithstanding any otherwise applicable rule of evidence, the commissioner and attorney general shall provide for the receipt of comments from the public in writing or on the record at the hearing. Oral public comments are not subject to cross-examination without the consent of the person providing the comments. However, the commissioner and the attorney general may rely on factual information provided in public comment only if the person providing the comment consents to cross-examination or the commissioner or the attorney general makes a specific finding that the factual information meets the requirements of Rule 804(b)(5) of the Montana Rules of Evidence.

Section 10. Experts. (1) The commissioner or the attorney general, or both, may contract with experts as reasonably necessary to:

(a) determine whether to approve a conversion transaction generally;

(b) perform an independent valuation of fair market value of the public assets of the transferor;

(c) evaluate the impact of the conversion on the affected community;

(d) determine whether there has been due diligence by the transferor in evaluating the proposed conversion transaction; and

(e) determine the existence of any conflicts of interest.

(2) If the commissioner or attorney general contracts for expert assistance under subsection (1), the transferor and the transferee shall each pay half of the costs reasonably incurred by the commissioner or the attorney general for the expert's services.

Section 11. Deadline for approval or nonapproval. (1) Within 60 days after the record, including the public hearing process, has been closed, the commissioner and the attorney general shall each issue a separate order to:

(a) approve the conversion transaction, with or without modifications; or

(b) disapprove the conversion transaction.

(2) If the commissioner and the attorney general do not both determine that the conversion transaction is approved, the conversion transaction is disapproved.

(3) Subject to subsection (4), the commissioner or the attorney general may, for cause, extend the time for making a determination for a 60-day period.

(4) The commissioner and the attorney general are limited to a maximum of two 60-day extensions for making a determination on the same application.

Section 12. Effect of determination. Determinations made by the commissioner and the attorney general under [section 11] become effective on the date on which both the commissioner and the attorney general have issued orders under [section 11].

Section 13. Criteria for attorney general approval of conversion transaction. (1) The attorney general may not approve a conversion transaction except upon a finding that the conversion transaction is in the public interest. If the attorney general or a court pursuant to [section 4] determines that the transaction does not involve public assets, the attorney general may not disapprove the conversion transaction under the provisions of [sections 1 through 18].

(2) In determining whether a conversion transaction is in the public interest, the attorney general shall require that:

(a) the fair market value of public assets is preserved and protected;

(b) the fair market value of public assets is expended or invested with reasonable and prudent consideration of the potential risk of financial loss associated with the conversion transaction;

(c) the fair market value of the public assets of a nonprofit health entity will be distributed as provided in [section 18];

(d) no part of the public assets of the transferor inure directly or indirectly to an officer, director, or trustee of the transferor or to the transferee or an officer, director, trustee, shareholder, or employee of the transferee or to any other person that is not a foundation or nonprofit organization approved to receive the assets by the attorney general; and

(e) an officer, director, or trustee of the nonprofit health entity does not receive any immediate or future remuneration as a result of a proposed conversion transaction except for the reasonable value of services rendered pursuant to a valid contract between the officer, director, or trustee and the nonprofit health entity.

(3) For purposes of the attorney general's review under 35-2-609, 35-2-617, and this section, there is a rebuttable presumption that the assets of a nonprofit health entity are public assets.

Section 14. Criteria for distribution of assets. (1) The public assets distributed to a foundation or nonprofit organization in accordance with [section 13 or 18] must be in the form of cash or a combination of cash and publicly traded securities or bonds or similar assets that are readily convertible to cash and for which a secondary market exists.

(2) The attorney general may determine that a distribution of assets of a nonprofit health entity is not required if the transaction is determined not to be a conversion transaction and is a transaction in the ordinary course of business and for fair market value.

(3) In determining fair market value, the attorney general may consider all relevant factors that may include but are not limited to:

(a) the value of the nonprofit health entity or an affiliate or the assets of the nonprofit health entity or affiliate that are determined as if the nonprofit health entity or affiliate had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;

(b) the value as a going concern;

(c) the market value;

(d) the investment or earnings value;

(e) the net asset value; and

(f) a control premium, if any.

Section 15. Criteria for commissioner approval of conversion transaction. (1) The commissioner may not approve a conversion transaction except upon a finding that the conversion transaction is in the public interest. If the attorney general or a court pursuant to [section 4] determines that the transaction does not involve public assets, the commissioner may not disapprove the conversion transaction under the provisions of [sections 1 through 18].

(2) In determining whether a conversion transaction is in the public interest, the commissioner shall consider:

(a) whether the transferor exercised due diligence in deciding to engage in a conversion transaction, selecting the transferee, and negotiating the terms and conditions of the conversion transaction;

(b) the procedures that the transferor used in making the decision, including whether appropriate expert assistance was used;

(c) whether any conflicts of interest were disclosed, including conflicts of interest of board members, executives, and experts retained by the transferor, transferee, or any other parties to the conversion transaction;

(d) whether the conversion has the likelihood of creating a significant adverse effect on the availability or accessibility of health care services or health insurance coverage in the affected community;

(e) whether the conversion transaction includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care;

(f) whether any management contract under the conversion transaction is for reasonable value; and

(g) whether the conversion transaction:

(i) is equitable to the public interest, enrollees, insureds, shareholders, and certificate holders, if any, of the transferor;

(ii) is in compliance with Title 33, chapters 30 and 31;

(iii) ensures that the transferee will possess surplus in an amount sufficient to comply with the surplus required under law and provide for the security of the transferee's certificate holders, if any, and policyholders.

(3) In making the determination required under this section, the commissioner may not determine that a conversion transaction is in the public

interest unless the nonprofit health entity considered the risks of a conversion transaction, including whether a conversion transaction:

- (a) would result in inefficient economies of scale; or
- (b) would violate federal or state antitrust laws.

(4) If an agreement for the conversion of a nonprofit health entity requires payment of money, as liquidated damages or otherwise, in the event of a breach of the agreement by the nonprofit health entity, the commissioner shall determine whether and to what extent the payment by the nonprofit health entity is in the public interest.

Section 16. Deposit of assets. Any public assets distributed pursuant to [section 14] as a result of the conversion transaction of a nonprofit health entity approved by the commissioner and the attorney general on or after [the effective date of this act] must be distributed as provided in [section 18].

Section 17. For-profit health entity. (1) A corporation that becomes a for-profit health entity under [sections 1 through 18] may not be considered to have abandoned its corporate status by virtue of a conversion transaction unless the conversion transaction provides specifically to the contrary.

(2) The certificate of authority, agent appointments, licenses, forms, and any other filings in existence at the time of a conversion transaction continue in full force and effect upon a conversion transaction if a corporation at all times remains qualified to engage in business in the state.

(3) All outstanding contracts of a transferor remain in full force and effect and need not be otherwise endorsed unless ordered by the commissioner.

Section 18. Distribution of proceeds — annual report. (1) Except as provided in subsection (5), the proceeds of a conversion transaction that are public assets must be distributed to an existing or new foundation or other nonprofit organization to be held in a trust that meets the following requirements:

(a) The foundation or nonprofit organization shall operate pursuant to 26 U.S.C. 501(c)(3) or 501(c)(4), and regardless of whether the foundation is classified as a private foundation under 26 U.S.C. 509, the foundation or nonprofit organization shall operate in accordance with the restrictions and limitations that apply to private foundations in 26 U.S.C. 4941 through 4945.

(b) The foundation or nonprofit organization must have a mission statement that is as close as possible to the mission of the converting nonprofit health entity.

(c) The foundation or nonprofit organization's assets may not be used to supplant government funds.

(d) The foundation or nonprofit organization may not be an agent or instrumentality of the government.

(e) The foundation or nonprofit organization and its directors, officers, and staff must be and shall remain independent of the parties to the conversion transaction and their affiliates. A person who is an officer, director, or staff member of a nonprofit health entity submitting a conversion plan at the time that the plan is submitted or at the time of the conversion transaction or within 5 years after the conversion may not be an officer, director, or staff member of the foundation. A director, officer, agent, or employee of the nonprofit health entity submitting the plan or the foundation receiving the charitable assets may not

benefit directly or indirectly from the transaction. Public officials, elected or appointed, may not serve as an officer, director, or staff member of the foundation or nonprofit organization.

(f) A foundation or nonprofit organization must have or shall establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting:

(i) any party to the conversion transaction or members of the board of directors and management of a party to the conversion transaction; or

(ii) the foundation or nonprofit organization's board of trustees, directors, agents, or employees.

(g) Boards of trustees or directors of the foundation or nonprofit organization shall reflect the geographic, ethnic, gender, age, socioeconomic, and other factors that the board considers to represent the diversity of the nonprofit health entity applicant's service area. In addition, trustees or directors must have the following qualifications and qualities:

(i) interest in and concern for the foundation or nonprofit organization and its mission;

(ii) objectivity and impartiality;

(iii) willingness and ability to commit time and thought to the foundation or nonprofit organization's affairs; and

(iv) commitment to the foundation or nonprofit organization as a whole and not to a special interest.

(h) Boards of trustees or directors must include persons with special knowledge, expertise, and skills in investments and asset management, finance, and nonprofit administration.

(2) A foundation or nonprofit organization that receives a distribution of public assets shall submit an annual report to the commissioner and to the attorney general regarding the award of grants and other charitable activities of the entity related to its use of the public assets received.

(3) The annual report submitted under subsection (2) must be made available to the public at the principal office of the foundation or nonprofit organization.

(4) The attorney general shall retain oversight and monitoring authority over the foundation or nonprofit organization that receives the proceeds of a proposed conversion transaction.

(5) Notwithstanding any other provision of this section, the proceeds of a conversion transaction that are public assets of a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations may be distributed to the member nonprofit public benefit corporations if the articles of incorporation of the nonprofit mutual benefit corporation provide for that distribution.

Section 19. Section 35-2-609, MCA, is amended to read:

"35-2-609. Limitations on mergers by public benefit or religious corporations. (1) ~~Without~~ *Except as provided in subsection (4) or without* the prior approval of the district court for the judicial district in which the corporation's registered office is located, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

- (a) a public benefit corporation or religious corporation;
- (b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;
- (c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or
- (d) a business or mutual benefit corporation, provided that:
 - (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;
 - (ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and
 - (iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

(4) *A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of 35-2-617 and [sections 1 through 18].*

Section 20. Section 35-2-617, MCA, is amended to read:

“35-2-617. Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation’s board if the proposed transaction is approved as required by subsection (2).

(2) Unless this chapter, the articles, *the* bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (a) by the board;
- (b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) *(a) Except as provided in subsection (7)(b), a public benefit corporation or religious corporation must shall give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.*

(b) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of [sections 1 through 18].

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors."

Section 21. Section 35-2-722, MCA, is amended to read:

"35-2-722. Notices to the attorney general. (1) *Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.*

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or

indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of [sections 1 through 18]."

Section 22. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 18].

Section 23. Effective date. [This act] is effective on passage and approval.

Section 24. Applicability. [This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 215

[SB 359]

AN ACT REVISING CERTAIN STATUTES RELATED TO SCHOOL DISTRICT ENROLLMENT; ALLOWING TUITION TO BE PAID FOR A NONRESIDENT PUBLIC SCHOOL STUDENT WHO REACHES THE AGE OF 18 DURING THE SCHOOL YEAR; MEASURING ENROLLMENT IN AGGREGATE HOURS TO DETERMINE PORTIONS OF FULL-TIME ENROLLMENT AND SETTING THE CONDITIONS UNDER WHICH ENROLLMENT IS INCLUDED IN THE CALCULATION OF AVERAGE NUMBER BELONGING FOR A SCHOOL DISTRICT; DEFINING "AGGREGATE HOURS"; AMENDING SECTIONS 20-1-101, 20-5-322, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

~~(1)~~(2) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

~~(2)~~(3) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

~~(3)~~(4) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4)(5) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

~~(5)~~(6) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

~~(6)~~(7) "County superintendent" means the county government official who is the school officer of the county.

~~(7)~~(8) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8)(9) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(9)(10) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

~~(12)~~(13) "Regents" means the board of regents of higher education.

~~(13)~~(14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(16) "State university" means Montana state university-Bozeman.

~~(16)~~(17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(18) "System" means the Montana university system.

~~(18)~~(19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(22) "Trustees" means the governing board of a district.

~~(22)~~(23) "University" means the university of Montana-Missoula.

~~(23)~~(24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 2. Section 20-5-322, MCA, is amended to read:

"20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) For purposes of payment under 20-5-324(6), a nonresident student who becomes a resident by reaching the age of 18 during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year."

Section 3. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

~~(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day (a) Except as provided in subsection (5), for the purpose of calculating ANB, enrollment in an education program:~~

~~(i) from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;~~

~~(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;~~

~~(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and~~

~~(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.~~

~~(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.~~

~~(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.~~

~~(d) A pupil in grades 1 through 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.~~

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment ~~at in a regular session of the program for at least 2 hours of either a morning or an afternoon session that provides 360 or more aggregate hours of pupil instruction per school year~~ must be counted as one-half pupil for ANB purposes. ~~The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.~~

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not

eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) *Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.*

(b) *Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.*

(c) *Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.*

(d) *This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.*

(11) *A district may only include, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:*

(a) *a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;*

(b) *unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;*

(c) *unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;*

(d) *receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;*

(e) *participating in the running start program at district expense under 20-9-706;*

(f) *receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;*

(g) *enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:*

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707."

Section 4. Effective date — applicability. [This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006.

Approved April 8, 2005

CHAPTER NO. 216

[HB 688]

AN ACT ESTABLISHING THE PATRICK G. GALVIN MEMORIAL HIGHWAY BETWEEN GREAT FALLS AND THE INTERSECTION OF MONTANA HIGHWAY 3 AND U.S. HIGHWAY 89 AT ARMINGTON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Patrick G. Galvin worked tirelessly to improve transportation and roads in the State of Montana; and

WHEREAS, Patrick G. Galvin believed strongly that Montana Highway 3 was an important link in the vitality of the economy of the state; and

WHEREAS, Montana Highway 3 is a crucial artery between North Central Montana and Eastern Montana for commercial entities and private citizens alike; and

WHEREAS, Patrick G. Galvin served the people of Montana with integrity and compassion during his four terms as a state representative; and

WHEREAS, Patrick G. Galvin had vast experience running freight trains from Great Falls to Laurel and saw on a daily basis the critical connection that Montana Highway 3 provides to all Montana citizens and businesses.

Be it enacted by the Legislature of the State of Montana:

Section 1. Patrick G. Galvin memorial highway. (1) There is established the Patrick G. Galvin memorial highway composed of the existing Montana highway 3 from the boundary of the city of Great Falls to the intersection of Montana highway 3 and U.S. highway 89 at Armington.

(2) When existing road signs between Great Falls and the intersection of Montana highway 3 and U.S. highway 89 at Armington need replacement, the department shall erect road signs reflecting the memorial designation in subsection (1).

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated or replaced.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2005

CHAPTER NO. 217

[SB 375]

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~If~~ *Except as provided in subsection (4), if* the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~If~~ *Except as provided in subsection (4), if* the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) *If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business."*

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to causes of action occurring on or after [the effective date of this act].

Approved April 13, 2005

CHAPTER NO. 218

[SB 470]

AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-203, MCA, is amended to read:

“2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, *including the supreme court*, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) ~~Provided, however, the~~ *The* presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) ~~However, except~~ *Except* as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) *The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.*

~~(5)(6)~~ (6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business ~~which~~ *that* is within the jurisdiction of that agency is subject to the requirements of this section.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2005

CHAPTER NO. 219

[HB 150]

AN ACT ALLOWING A PUBLIC OFFICIAL TO HAVE A MONTANA FLAG DRAPED OVER THE OFFICIAL’S CASKET.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of Montana flag at funerals. (1) A public official has the right to have a Montana state flag draped over the casket of the public official. The family of the public official is responsible for providing the flag.

(2) As used in this section, “public official” means a person who was ever elected to a statewide office, a state office from a district, or a countywide office.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 16, and the provisions of Title 2, chapter 16, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 220

[HB 153]

AN ACT CLARIFYING THE PUBLIC SERVICE COMMISSION'S EXISTING AUTHORITY TO REVIEW AND APPROVE MATERIAL AFFILIATE TRANSACTIONS OF REGULATED ENERGY UTILITIES; DEFINING CERTAIN TERMS; REQUIRING THAT A REGULATED ENERGY UTILITY MAY NOT ENTER INTO A MATERIAL AFFILIATE TRANSACTION WITHOUT THE COMMISSION'S REVIEW AND APPROVAL; PROVIDING AN EXEMPTION; PROVIDING THE PUBLIC SERVICE COMMISSION WITH RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) “Affiliate” means an entity closely connected or associated with a regulated energy utility.

(2) “Affiliate transaction” means a financial transaction between the utility operations of a regulated energy utility and an affiliate.

(3) “Material affiliate transaction” means an affiliate transaction that has a significant potential impact on the financial stability of a regulated energy utility, including but not limited to:

(a) dividend payments from a regulated energy utility to a corporate parent company if those payments would place the regulated energy utility's credit quality or property in jeopardy;

(b) intercompany loans or other extensions of credit or advances of working capital between a regulated energy utility and an affiliate if those activities would place the regulated energy utility's credit quality or property in jeopardy;

(c) the use of proceeds in issuing securities for which the assets of the regulated energy utility are pledged; or

(d) external borrowing by a regulated energy utility with a term greater than 120 days if the loan would place the regulated energy utility's credit quality or property in jeopardy.

(4) “Regulated energy utility” means a public utility with more than 100 customers that owns distribution facilities for the distribution of electricity or

natural gas to the public and that is regulated by the commission pursuant to this title.

Section 2. Commission approval of material affiliate transactions — rulemaking authority. (1) In addition to the commission's existing regulatory authority under this title and except as provided in [section 3] and subsection (4) of this section, a regulated energy utility may not enter into a material affiliate transaction without the commission's review and approval.

(2) The commission shall approve or deny the material affiliate transaction. Upon a showing of good cause, the commission shall hold a public hearing on the proposed material affiliate transaction within 45 days of an official notification by the regulated energy utility to the commission that the utility is intending to enter into a material affiliate transaction.

(3) If a material affiliate transaction involves dividend payments from a regulated energy utility to a corporate parent company, the commission may limit those dividend payments if the payments would place the regulated energy utility's credit quality or property in jeopardy.

(4) A regulated energy utility may request an exemption from any of the provisions in this section, and the commission may grant the exemption on a case-by-case basis upon a showing of good cause and after notice and an opportunity for hearing.

(5) The commission may promulgate rules that implement the provisions of [sections 1 through 3].

Section 3. Exemption. A regulated energy utility that has entered into a stipulation agreement with the commission regarding the separation of its nonregulated utility business is exempt from the provisions of [sections 1 through 3] as long as the stipulation agreement remains effective under a federal bankruptcy court order.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 221

[HB 199]

AN ACT REVISING LAWS RELATED TO ENERGY POLICY DEVELOPMENT AND LEGISLATIVE OVERSIGHT; PROVIDING THAT THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE HAS ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND MONITORING FUNCTIONS FOR THE PUBLIC SERVICE COMMISSION; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE INSTEAD OF THE ENVIRONMENTAL QUALITY COUNCIL TO MAINTAIN A CONTINUAL PROCESS TO DEVELOP THE COMPONENTS OF A COMPREHENSIVE STATE ENERGY POLICY; AMENDING SECTIONS 5-5-230, 90-4-1002, AND 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-230, MCA, is amended to read:

“5-5-230. Energy and telecommunications interim committee. The energy and telecommunications interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public service regulation and the ~~entities attached to the department for administrative purposes~~ *public service commission.*”

Section 2. Section 90-4-1002, MCA, is amended to read:

“90-4-1002. Definitions. As used in 90-4-1003, the following definitions apply:

(1) ~~“Council” means the environmental quality council established in 5-16-101~~ *“Committee” means the energy and telecommunications interim committee established in 5-5-230.*

(2) *“Department” means the department of environmental quality established in 2-15-3501.”*

Section 3. Section 90-4-1003, MCA, is amended to read:

“90-4-1003. Energy policy development process. (1) The department and the ~~council committee~~, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the ~~council committee~~ specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the ~~council committee~~ shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the ~~council committee~~. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group’s recommendations, the ~~council committee~~ shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the ~~council committee~~; and

(iv) consult regularly with the ~~council~~ *committee* to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the ~~council~~ *committee* may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 222

[HB 280]

AN ACT EXPANDING THE AUTHORIZED USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION TO INCLUDE ALL ARRAIGNMENTS, ACCEPTANCE OF PLEAS, AND SENTENCING HEARINGS; CLARIFYING THE REQUIREMENTS FOR AUDIO-VIDEO COMMUNICATIONS; REQUIRING THE COURT TO INFORM THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE USE OF AUDIO-VIDEO COMMUNICATIONS; AMENDING SECTIONS 46-12-201, 46-12-211, 46-16-105, 46-16-123, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-12-201, MCA, is amended to read:

"46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party to be seen*, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, ~~in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by~~ *be satisfied by two-way electronic audio-video communication if neither party objects and the court agrees to its use and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate so that the defendant and the judge

can see each other simultaneously and converse with each other, so that the defendant and the defendant's counsel, if any, can communicate privately, and so that the defendant and the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that the defendant's counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty or nolo contendere from a defendant ~~who is not~~ *unless the defendant is physically present in the courtroom or is appearing before the court by means of two-way electronic audio-video communication.*"

Section 2. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure — use of two-way electronic audio-video communication. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (a) move for dismissal of other charges;
- (b) agree that a specific sentence is the appropriate disposition of the case; or
- (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its

use *and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate as provided in 46-12-201.”

Section 3. Section 46-16-105, MCA, is amended to read:

“46-16-105. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere must be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before judgment or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. A judgment becomes final for purposes of this subsection (2):

(a) when the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(3) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate as provided in 46-12-201.”

Section 4. Section 46-16-123, MCA, is amended to read:

“46-16-123. Absence of defendant on receiving verdict or at sentencing. (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) (a) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant’s presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant’s absence.

(b) *For purposes of subsection (2)(a), the defendant’s appearance may be through the use of two-way electronic audio-video communication, allowing all of the participants to be heard in the courtroom by all present and allowing the party speaking to be seen. Audio-video communication may be used if neither party objects and the court agrees to its use and has informed the defendant that the defendant has the right to object to its use. The audio-video communication must operate as provided in 46-12-201.”*

Section 5. Section 46-18-102, MCA, is amended to read:

“46-18-102. Rendering judgment and pronouncing sentence — use of two-way electronic audio-video communication. (1) The judgment must be rendered in open court. For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ a judgment rendered through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be a judgment rendered in open court. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use*. The audio-video communication must operate as provided in 46-12-201.

(2) If the verdict or finding is not guilty, judgment must be rendered immediately and the defendant must be discharged from custody or from the obligation of a bail bond.

(3) (a) Except as provided in 46-18-301, if the verdict or finding is guilty, sentence must be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record the reasons for imposing the sentence.”

Section 6. Section 46-18-115, MCA, is amended to read:

“46-18-115. Sentencing hearing — use of two-way electronic audio-video communication. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the imposition of a sentence enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use*. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim’s opinion regarding appropriate sentence. At the victim’s option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 223

[HB 301]

AN ACT AUTHORIZING THE CONTINUING SALE OF LEWIS AND CLARK BICENTENNIAL SPECIALTY LICENSE PLATES; PROVIDING THAT REVENUE FROM THE LICENSE PLATE SALES BE ALLOCATED TO THE DEPARTMENT OF COMMERCE AND THE MONTANA HISTORICAL SOCIETY AS THE SUCCESSORS TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO BE ALLOCATED TO CERTAIN PRIVATE, NONPROFIT ASSOCIATIONS THAT SUPPORT LEWIS AND CLARK DESTINATION SITES AND TO BE USED FOR PROJECTS RELATED TO LEWIS AND CLARK; ESTABLISHING STATE SPECIAL REVENUE ACCOUNTS FOR THE RECEIPT OF LICENSE PLATE REVENUE; PROVIDING FOR THE ALLOCATION AND USE OF THE REVENUE IN THE ACCOUNTS; REVISING THE DEFINITION OF "SPONSOR" WITH REGARD TO GENERIC SPECIALTY LICENSE PLATES TO INCLUDE A SUCCESSOR TO A SPONSOR TERMINATING BY LAW; ELIMINATING CERTAIN STATUTORY REFERENCES TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION; AMENDING SECTIONS 2-15-150, 2-15-151, 2-17-808, 17-7-502, 61-3-473, 61-3-476, 61-3-477, AND 61-3-480, MCA; REPEALING SECTION 2-17-809, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 135, CHAPTER 114, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-150, MCA, is amended to read:

"2-15-150. (Temporary) Lewis and Clark bicentennial commission — membership — purpose — account. (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the administrator of the Montana promotions division within the department of commerce, established in 2-15-1801.

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

~~(4) (a) The Lewis and Clark bicentennial commission is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$3 million, payable over a term not to exceed 6 years, for the purposes identified in subsection (3).~~

~~(b) The Lewis and Clark bicentennial commission shall pledge to the repayment of any indebtedness the proceeds from the sale of Lewis and Clark bicentennial license plates as provided in 2-15-151.~~

~~(c) The proceeds of any loan from the board of investments to the Lewis and Clark bicentennial commission must be deposited in the account established in subsection (5).~~

~~(5)~~(4) There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

~~(6)~~(5) The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. ~~(Subsections (1) through (3), (5), and (6) terminate (Terminates December 31, 2007—sec. 2, Ch. 428, L. 1997; subsection (4) terminates December 31, 2006—sec. 17, Ch. 414, L. 2001).)~~

Section 2. Section 2-15-151, MCA, is amended to read:

“2-15-151. (Temporary) Lewis and Clark bicentennial license plates — authorization to apply as sponsor — use of proceeds. (1) The Lewis and Clark bicentennial commission may:

~~(a) apply to the department of justice to sponsor a generic specialty license plate as provided in 61-3-476; and~~

~~(b) require an~~ An applicant for a generic specialty license plate ~~sponsored that was sponsored by the former Lewis and Clark bicentennial commission to~~ shall make a donation of \$20 to the department of commerce and the Montana historical society as the successors to the Lewis and Clark bicentennial

commission upon initial issuance of the license plates and a donation of \$20 upon each annual renewal of the license plates.

(2) The donation provided for in subsection (1)(b) (1) must be paid to the county treasurer, who shall remit the entire amount to the department of revenue for deposit in the special revenue ~~account~~ *accounts* established in ~~2-15-150~~ [section 3].

~~(3) The Lewis and Clark bicentennial commission shall establish the criteria that entities or organizations are required to meet in order to receive proceeds from the special revenue account established in 2-15-150, and the commission may distribute the money in a manner and in any amount that it determines appropriate.~~

~~(4) The Lewis and Clark bicentennial commission may retain any amount of money collected in the special revenue account that it determines necessary to fulfill its responsibilities and carry out the activities provided in 2-15-150.~~

~~(5) Entities receiving funds under subsection (3) may not use the funds for purposes other than those prescribed by the Lewis and Clark bicentennial commission and subject to 2-15-150.~~

(3) *Beginning January 1, 2007, the department of commerce and the Montana historical society shall use money in the special revenue accounts established in [section 3] to support projects related to Lewis and Clark.*

~~(6) Proceeds from license plate donations and proceeds from any loan from the board of investments that are received in the special revenue account established in 2-15-150 are statutorily appropriated, as provided in 17-7-502, to the Lewis and Clark bicentennial commission. (Terminates December 31, 2006 — see. 17, Ch. 414, L. 2001.)~~

Section 3. Department of commerce Lewis and Clark bicentennial account — Montana historical society Lewis and Clark bicentennial account. (1) (a) There is a department of commerce Lewis and Clark bicentennial account in the state special revenue fund. Three-fourths of the revenue from the sales of Lewis and Clark bicentennial license plates under 2-15-151 must be placed into the account and must be used as provided in 2-15-151. The revenue in the account is statutorily appropriated, as provided in 17-7-502, to the department of commerce.

(b) There is a Montana historical society Lewis and Clark bicentennial account in the state special revenue fund. One-fourth of the revenue from the sales of Lewis and Clark bicentennial license plates under 2-15-151 must be placed into the account and must be used as provided in 2-15-151. The revenue in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society.

(2) The department of commerce shall allocate the proceeds that are deposited in the account established in subsection (1)(a) as grants, as follows:

- (a) one-third to the Lewis and Clark interpretive center foundation;
- (b) one-third to the Pompeys pillar historical association;
- (c) one-third to the travelers' rest preservation and heritage association.

Section 4. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, statues, memorials, monuments, and art displays. (1) The following busts, statues, memorials,

monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

- (a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;
- (b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;
- (c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;
- (d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;
- (e) the statues of Wilbur Fiske Sanders, ~~Jeanette~~ Jeannette Rankin, and Mike and Maureen Mansfield;
- (f) the Montana statehood centennial bell;
- (g) the gallery of outstanding Montanans;
- (h) the Montana constitutional exhibit; and
- (i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

- (a) the statue of Thomas Francis Meagher;
 - (b) the plaque commemorating Donald Nutter; and
 - (c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.
- (3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.
- (4) The senate sculpture ~~provided for in 2-17-809~~ *depicting the Lewis and Clark expedition* is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.
- (5) The council shall determine the specific placement of the items identified in subsections (1) through (3)."

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: ~~2-15-151~~; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312;

10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; [section 3]; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005; and pursuant to sec. 12, [LC 1693], L. 2005, the inclusion of [section 3] becomes effective December 31, 2006.)"

Section 6. Section 61-3-473, MCA, is amended to read:

"61-3-473. Definitions. As used in 61-3-472 through 61-3-481, the following definitions apply:

(1) "Generic specialty license plate" means a license plate that bears the name, identifying phrase, or graphic of a sponsor, approved by the department, and that is issued by the department.

(2) "Governmental body" means a tribal government, state agency, local government, school district, or other political subdivision within this state.

(3) "Organization" means an association, corporation, group, or other entity:

(a) recognized by the internal revenue service as tax-exempt under 26 U.S.C. 501(c)(3); and

(b) that does not have as its primary focus sectarian activities, including but not limited to activities aimed at promoting the adoption of one or more religious or political viewpoints.

(4) "Sponsor" means the governmental body, *the governmental body's successor*, or *an* organization approved by the department to promote the sale and issuance of a generic specialty license plate.

(5) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized Indian group or community located in Montana that is exercising self-government powers and that is recognized as

being eligible for services provided by the United States to Indians because of their status as Indians.”

Section 7. Section 61-3-476, MCA, is amended to read:

“61-3-476. Qualification and approval of governmental body as sponsor. (1) To qualify for sponsorship of a generic specialty license plate, a governmental body shall:

~~(1)(a)~~ apply for sponsorship through the executive body of a tribal government, the state agency director or department head, the commission or council of a local government or political subdivision, or the board of trustees of a school district on a form or in a format approved by the department;

~~(2)(b)~~ if the governmental body is a state agency, identify the statutory authority under which it is relying to seek sponsorship of a generic specialty license plate and specify the account in which any generic specialty license plate donations must be placed;

~~(3)(c)~~ designate one of its officers or employees as the governmental body’s generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the governmental body’s sponsorship of generic specialty license plates and shall file the liaison’s name, address, and telephone number with the department.

(2) The legislature may designate a governmental body to be a successor to a governmental body that is terminated. The successor governmental body shall succeed to all rights and responsibilities of the original sponsor.”

Section 8. Section 61-3-477, MCA, is amended to read:

“61-3-477. Generic specialty license plate liaison — responsibilities.

(1) Upon the department’s approval of an organization’s or a governmental body’s proposed sponsorship of a generic specialty license plate, the generic specialty license plate liaison designated under 61-3-475(1)(c) and ~~61-3-476(3) 61-3-476(1)(c)~~ shall submit to the department the sponsor’s name, identifying phrase, and graphic that will appear on the generic specialty license plate.

(2) The generic specialty license plate liaison shall:

(a) verify and approve in writing the prototype or mockup of the sponsor’s generic specialty license plate before it may be manufactured or issued by the department; and

(b) confirm, in writing, the donation fee established by the sponsor for initial purchase of the sponsor’s generic specialty license plate and for renewal of the sponsor’s generic specialty license plate if the fee is required on renewal.

(3) Once a sponsor’s generic specialty license plate has been approved for manufacture and distribution, the donation fee established by the sponsor and confirmed by the liaison may not be changed unless a new plate design is authorized in accordance with 61-3-475.”

Section 9. Section 61-3-480, MCA, is amended to read:

“61-3-480. Fees for generic specialty license plates — disposition. (1)

In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of \$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer shall, upon receipt of the fees:

- (a) deposit \$5 of the \$15 administrative fee in the county general fund;
- (b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and
- (c) as provided in 15-1-504, once each month, transmit to the department of revenue for distribution:
 - (i) \$10 of the \$15 administrative fee to the state general fund; and
 - (ii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.
- (3) If the donation fee is required by a sponsor upon renewal of generic specialty license plates, the fee must be paid to the county treasurer upon renewal of registration and transmitted to the department of revenue as prescribed in subsection (2).
- (4) Once each month, the department of revenue shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or ~~61-3-476(3)~~ 61-3-476(1)(c) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month."

Section 10. Repealer. Section 2-17-809, MCA, section 17, Chapter 414, Laws of 2001, and section 135, Chapter 114, Laws of 2003, are repealed.

Section 11. Performance of administration. It is the intent of the legislature that costs of administration to implement the functions required in [this act] be funded within existing appropriation levels.

Section 12. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [section 3].

Section 13. Effective dates. (1) [Sections 1 through 5 and 10] are effective December 31, 2006.

(2) [Sections 6 through 9, 11, and 12 and this section] are effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 224

[HB 316]

AN ACT REVISING LAWS RELATED TO FEES CHARGED BY THE PUBLIC SERVICE COMMISSION; ELIMINATING A REQUIREMENT THAT FEES OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION BE COMMENSURATE WITH COSTS; REQUIRING THAT FEES SET BY THE DEPARTMENT MUST BE REASONABLE; PROVIDING ADDITIONAL EXCEPTIONS TO THE REQUIREMENT THAT FEES OF THE DEPARTMENT NOT EXCEED \$500; REQUIRING FEES COLLECTED BY THE DEPARTMENT BE DEPOSITED IN A STATE REVENUE FUND TO THE CREDIT OF THE DEPARTMENT; AMENDING SECTIONS 69-1-114 AND 69-1-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-114, MCA, is amended to read:

“69-1-114. Fees. (1) Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute *reasonable*.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-8-421(7), or 69-12-423(2), ~~no~~ a fee set by the commission may *not* exceed \$500.

(3) All fees collected by the department under 69-8-421(7) must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in 69-8-421(7).”

Section 2. Section 69-1-402, MCA, is amended to read:

“69-1-402. Funding of the department of public service regulation.

(1) All fees collected under this section *and any other fees, except as provided in 69-1-114(3)*, must be deposited in an account in the state special revenue fund to the credit of the department. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 30 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.”

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 225

[HB 483]

AN ACT PROHIBITING POLICE OFFICERS FROM GOING ON STRIKE; PROVIDING FOR BINDING ARBITRATION IN LABOR NEGOTIATIONS INVOLVING POLICE OFFICERS; PROVIDING PROCEDURES FOR BINDING ARBITRATION; AMENDING SECTION 7-32-4114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Strikes by police officers prohibited. (1) It is unlawful for a police officer to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) (a) As used in this section, “strike” means an action listed in subsection (2)(b), in concerted action with others, for the purpose of inducing, influencing, or coercing a change in the conditions of employment, compensation, rights, privileges, or obligations of employment of a police officer.

(b) A police officer may not engage in the following actions in concert with others:

- (i) refusal to report for duty;
- (ii) willful absence from the police officer’s position;
- (iii) stoppage of work; or
- (iv) departure from the full, faithful, or proper performance of duties of employment.

Section 2. Mediation of disputes. (1) If after a 150-calendar day period of good faith negotiation over the terms of an agreement, or 150 days after certification or recognition of an exclusive representative, an agreement has not been signed, either or both of the parties may notify the board of personnel appeals of the status of the negotiations and of the need for a mediator. The parties may agree to request a mediator before the end of the 150-day period. The 150-day period begins when the parties meet for the first bargaining session and each party has received the other party’s initial proposal. Upon receipt of the notification, the board of personnel appeals shall appoint a mediator and notify the parties of the appointment.

(2) (a) After 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Written notification of an impasse must be filed with the board of personnel appeals.

(b) Within 7 days of the declaration of an impasse, each party shall submit to the mediator the final written offer of the party, including a cost summary of the offer. Within 7 days of receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party’s cost summary addressing those issues on which the parties have failed to reach an agreement. Each party’s proposed contract language must be titled “Final Offer”.

(c) Within 30 days after the mediator makes public the parties’ final offers, the parties may agree to and, upon agreement, shall jointly petition the board of personnel appeals to appoint a fact finder. The fact finder must be appointed as provided in 39-31-308(2).

(d) If an agreement is not reached within 30 days after the mediator makes the final offers public or, if the parties participated in fact finding, within 30 days after the receipt of the fact finder’s report, either party may petition the board of personnel appeals for binding arbitration. The petition must include a copy of each party’s “Final Offer”, as provided in subsection (2)(b).

Section 3. Binding arbitration — policy. (1) It is the policy of the state that because the right of police officers to strike is prohibited by [section 1], it is necessary to the high morale of police officers and to the efficient operation of police departments to provide an alternative, expeditious, and effective procedure for the resolution of labor disputes through binding arbitration.

(2) Binding arbitration must be scheduled by mutual agreement no earlier than 30 days following the submission of the petition seeking binding arbitration under [section 2(2)(d)].

Section 4. Selection of arbitrator — procedure — cost-sharing. (1) (a) After receipt of the petition to arbitrate under [section 2(2)(d)], the board of personnel appeals shall submit a list of five qualified, disinterested, and unbiased individuals to the parties. Each party shall alternately strike two names from the list. The order of striking names must be determined by a coin toss. The remaining individual is the arbitrator.

(b) If the parties have not designated the arbitrator and notified the board of personnel appeals of their choice within 5 days of receipt of the list, the board of personnel appeals shall appoint the arbitrator from the names on the list. However, if one of the parties strikes names from the list, as provided in subsection (1)(a), the board of personnel appeals shall appoint the arbitrator from the names remaining on the list.

(2) The arbitrator shall establish the dates, times, and places of hearings. The arbitrator may issue subpoenas. Within 14 calendar days prior to the date of a hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects. The last best offer package may not be changed. The arbitrator may administer oaths and shall afford the parties the opportunity to examine and cross-examine all witnesses and to present evidence relevant to the dispute.

(3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through (3)(h). Primary consideration must be given to the criteria in subsection (3)(a). The criteria are:

- (a) the interest and welfare of the public;
- (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract, giving consideration and weight to the other services provided by the unit of government, as determined by the governing body of the unit of government;
- (c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided;
- (d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;
- (e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states;
- (f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost of living;
- (g) the stipulations of the parties; and
- (h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a) through (3)(g) provide a sufficient basis for an award.

(4) Within 30 days after the conclusion of the hearings or an additional period agreed upon by the parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall make written findings along with an opinion and order. The opinion and order must be served on the parties and the board of personnel appeals. Service may be made by personal

delivery or by certified mail. The findings, opinion, and order must be based upon the criteria listed in subsection (3).

(5) The cost of arbitration must be borne equally by the parties.

Section 5. Arbitration decision final. Subject to Title 27, chapter 5, part 3, the decision of the arbitrator is final and is binding on the parties, and the board of personnel appeals shall issue an order containing the decision. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. An order issued by the board of personnel appeals pursuant to this section may be enforced by either party or the board of personnel appeals in the district court for any county in which the dispute arose.

Section 6. Section 7-32-4114, MCA, is amended to read:

“7-32-4114. Restrictions on activities of ~~policemen~~ police officers. (1) Except as provided in subsection (2), a member of the police force may not hold any other office or be employed in any other department of the city or town government. *A member of the police force may not strike, as provided in [section 1].*

(2) A member of the police force of a third-class city or of a town may be employed in another department of the city or town government. However, the member may not hold political office in the city or town government.

(3) The fact that a person is an officer or member of the police department does not deprive the person's spouse or any member of the person's family of the right to participate in political activity or to hold public or political office.

(4) An officer or member of the police department may participate in political activity ~~provided that if the officer does not do so while on duty or in uniform or that it if the activity does not otherwise interfere with the performance of duties.~~

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 39, chapter 31, and the provisions of Title 39, chapter 31, apply to [sections 1 through 5].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 226

[HB 492]

AN ACT PROVIDING FOR THE ABANDONMENT OF A PORTION OF THE RIGHT-OF-WAY OR FOR ABANDONMENT OF HIGHWAY PROPERTY WHEN THE CONTIGUOUS PROPERTY HAS BEEN SUBDIVIDED PRIOR TO ABANDONMENT AND WHEN IT IS DETERMINED TO NOT BE NECESSARY TO THE LAYING OUT, ALTERING, CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF A ROAD OR HIGHWAY; PROVIDING CRITERIA AND PROCEDURES FOR THE ABANDONMENT; AMENDING SECTIONS 60-2-107, 60-4-201, 60-4-202, 60-4-203, AND 60-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 6] is to provide for the abandonment of an interest in real property that the department has determined is not necessary to the laying out, altering, construction, improvement, or maintenance of a road or highway. The current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way or for abandonment of highway property where the contiguous property has been subdivided prior to abandonment.

Section 2. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Abandoned interest" means the fee simple or lesser interest in the subject property after the abandonment has been ordered by the commission.

(2) "Abandonment" means cessation of use of right-of-way or activity on the right-of-way with no intention to reclaim or use the right-of-way again.

(3) "Contiguous property" means subdivided parcels along one side of the length of the remainder.

(4) "Remainder" means the area lying between the centerline and the new right-of-way line as determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a road or highway.

(5) "Subject property" means that portion of highway right-of-way for which abandonment is sought.

Section 3. Application of other laws. (1) The provisions of 60-2-107(1) through (3), 60-4-201, 60-4-202, 60-4-203, and 60-4-209(1) and (3) through (5) do not apply to abandonment under [sections 1 through 6].

(2) The provisions of 60-2-107(4) and (5) apply to abandonment under [sections 1 through 6] to the extent that reasonable access must remain after the abandonment.

Section 4. Procedure for abandonment. (1) Upon receipt of a petition, in writing, for the abandonment of the subject property from three or more owners of contiguous property, the department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the remainder.

(2) The department shall prepare an order of abandonment to propose to the commission.

(3) The proposed order must state that the subject property is subject to all easements and utilities apparent or of record.

(4) Before abandoning the subject property, the commission shall notify the board of county commissioners in writing of its intent to abandon the subject property and shall hold a public hearing in the county or counties affected by the abandonment.

(5) The commission shall publish the notice of proposed abandonment and public hearing for 3 successive weeks in local newspapers within the county.

(6) The commission, in its sole discretion, may enter an order abandoning the subject property.

(7) The order with exhibits attached must be recorded by the department in the office of the clerk and recorder in the county or counties in which the subject property is located.

Section 5. Criteria for abandonment. (1) Subject to subsection (2), the commission shall enter an order abandoning the subject property upon finding that:

(a) the department has determined that the cost of disposing of the subject property by sale pursuant to 60-4-202 or exchange pursuant to 60-4-201 exceeds the fair market value of the subject property;

(b) a remainder exists to provide reasonable access; and

(c) at least one of the following applies:

(i) the disposal qualifies as an exception to 23 CFR 710.403(d);

(ii) reimbursement of federal funds is not required; or

(iii) the commission agrees to any required reimbursement of federal funds.

(2) An owner of contiguous property who does not object to the proposed receipt of title to the abandoned interest is considered to have consented to the receipt of title.

Section 6. Title. (1) The department is not responsible for apportioning the abandoned interest among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply to this abandonment.

(2) By consummating the abandonment, neither the department nor the commission gives the covenants set forth in 30-11-110 or warrants title.

(3) The interest acquired by each owner of contiguous property is the abandoned interest in the subject property between the extension of the boundaries of the contiguous property, extending on the same course and intersecting with the linear boundary of the remainder.

Section 7. Section 60-2-107, MCA, is amended to read:

“60-2-107. Abandonment of highways — exchange of roadways — public notice required. (1) ~~The~~ *Except as provided in [sections 1 through 6],* the commission may abandon highways on the federal-aid systems and state highways.

(2) ~~Before~~ *Except as provided in [sections 1 through 6],* before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) ~~The~~ *Except as provided in [sections 1 through 6],* the commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to access public land unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.”

Section 8. Section 60-4-201, MCA, is amended to read:

“60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. ~~The~~ *Except as provided in [sections 1 through 6], the* department may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) ~~Prior~~ *Except as provided in [sections 1 through 6], prior* to making the exchange, the department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.”

Section 9. Section 60-4-202, MCA, is amended to read:

“60-4-202. Sale of interest in real property. (1) The department may sell an interest in real property if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. *Except as provided in [sections 1 through 6] and subsection (2) of this section,* if the interest is reasonably of a value in excess of \$10,000, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

(2) (a) The department may sell an interest in real property without a public auction directly to:

- (i) a federal, state, tribal, or local government;
- (ii) an agency of government;
- (iii) a school district; or
- (iv) a unit of the Montana university system.

(b) The department shall obtain fair market value for the property.

(3) ~~Before~~ *Except as provided in [sections 1 through 6], before* the department sells an interest in real property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in buying the land proposed for sale, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest, the department shall offer the land for sale as provided in 60-4-203 and this section.”

Section 10. Section 60-4-203, MCA, is amended to read:

“60-4-203. Conduct of sale. (1) ~~The~~ *Except as provided in [sections 1 through 6], the* department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is

located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) ~~Before~~ *Except as provided in [sections 1 through 6], before* the sale of an interest having a value in excess of \$10,000, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) ~~A~~ *Except as provided in [sections 1 through 6], a* sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) ~~Title~~ *Except as provided in [sections 1 through 6], title* to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.”

Section 11. Section 60-4-209, MCA, is amended to read:

“60-4-209. Abandoned highway property — title vests in contiguous owner. (1) ~~Upon~~ *Except as provided in [sections 1 through 6], upon* abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or ~~his~~ *the owner's* successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) ~~The~~ *Except as provided in [sections 1 through 6], the* interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of ~~such~~ *the* interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are ~~one and~~ the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell ~~such~~ *the* interest.

(5) ~~The~~ *Except as provided in [sections 1 through 6], the* interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar

development, the property ~~shall~~ *must* revert to the state for sale pursuant to this part. This restriction applies to all subsequent holders of title to the property.”

Section 12. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to [sections 1 through 6].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 227

[HB 514]

AN ACT INCREASING THE RESTITUTION FOR THE ILLEGAL TAKING OF A GRIZZLY BEAR; AMENDING SECTIONS 87-1-111 AND 87-1-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, grizzly bears in the Yellowstone ecosystem have achieved recovery goals established by the United States Fish and Wildlife Service; and

WHEREAS, the United States Fish and Wildlife Service has indicated that it intends to remove grizzly bears in the Yellowstone ecosystem from the list of threatened and endangered species in 2005; and

WHEREAS, once delisted, grizzlies will be managed by the State of Montana; and

WHEREAS, illegal taking of a grizzly bear constitutes a theft of valuable state property and could delay delisting.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-111, MCA, is amended to read:

“87-1-111. Restitution for illegal killing or possession of certain wildlife. (1) Except as provided in 87-1-115 and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

- (a) bighorn sheep, ~~grizzly bear~~, and endangered species, \$2,000;
 - (b) elk, caribou, bald eagle, black bear, and moose, \$1,000;
 - (c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, \$500;
 - (d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;
 - (e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), \$100;
 - (f) game bird (except swan), \$25;
 - (g) game fish, \$10.
- (2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as

restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.”

Section 2. Section 87-1-115, MCA, is amended to read:

“87-1-115. Restitution for illegal killing or possession of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the purposeful or knowing illegal killing, taking, or possession of a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) bighorn sheep with at least one horn equal to or greater than three-fourth curl as defined by commission regulation, \$30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, *or any grizzly bear*, \$8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, \$6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, \$8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, \$2,000.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 228

[HB 746]

AN ACT CLARIFYING MOTOR VEHICLE REGISTRATION REQUIREMENTS FOR NATIONAL GUARD AND RESERVE MEMBERS WHO ARE STATIONED OUTSIDE MONTANA; AND AMENDING SECTION 61-3-456, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-456, MCA, is amended to read:

“61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.

(1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana, *including a national guard or reserve member*, and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer’s identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(5)(b);

(b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or

(c) any of the fees provided in part 5 of this chapter.”

Approved April 15, 2005

CHAPTER NO. 229

[SB 21]

AN ACT REGULATING DAMAGES THAT MAY BE GRANTED FOR MEDICAL MALPRACTICE THAT REDUCES A PATIENT'S CHANCE OF RECOVERY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability of health care provider for reduced chance of recovery caused by malpractice. (1) For purposes of a malpractice claim, as defined in 27-6-103, damages may be awarded against a health care provider, as defined in 27-6-103, if a negligent act or omission during diagnosis or treatment for a medical condition reduces a patient's chance of recovering and the negligent act or omission is a contributing cause of:

(a) death;

(b) survival for a shorter period of time;

(c) no recovery;

(d) a recovery that is of lesser extent or quality or that takes longer to occur;

or

(e) other injury.

(2) The damages must be determined based on which of the events referred to in subsections (1)(a) through (1)(e) occurred and the resulting types of injury, damage, and loss.

(3) (a) If the evidence establishes that the chance of recovering prior to the negligent act or omission was more likely than not, the damages awarded must be 100% of the damages determined under subsection (2).

(b) If the evidence establishes that the chance of recovering prior to the negligent act or omission was not more likely than not, the damages awarded must be the difference between the chance of recovering prior to the negligent act or omission and the chance of recovering after the negligent act or omission multiplied by the total damages determined under subsection (2).

Section 2. Effective date. [This act] is effective July 1, 2005.

Section 3. Applicability. [This act] applies to causes of action that arise on or after [the effective date of this act].

Approved April 15, 2005

CHAPTER NO. 230

[SB 29]

AN ACT EXEMPTING INDIVIDUALS CONVICTED OF A FELONY DRUG OFFENSE FROM THE FEDERAL PROHIBITION ON ELIGIBILITY FOR BENEFITS UNDER FOOD STAMPS OR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES UNDER CERTAIN CONDITIONS; AUTHORIZING THE ADOPTION OF RULES GOVERNING TESTING AND REPORTING REQUIREMENTS TO ALLOW FELONY DRUG OFFENDERS TO RECEIVE BENEFITS; AMENDING SECTIONS 53-4-212 AND 53-4-231, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of public assistance programs.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any; ~~and~~

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued; *and*

(t) any random drug testing or reporting requirements for persons who are required to comply with the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for violations of conditions of supervision or treatment requirements. The department may enter into agreements with the department of corrections regarding testing and reporting on offenders under the supervision of the department of corrections."

Section 2. Section 53-4-231, MCA, is amended to read:

"53-4-231. Eligibility. (1) Subject to the provisions of subsections (2) through ~~(5)~~ (6), assistance may be granted under this part to:

(a) a dependent child;

(b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents of a dependent child who:

(i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department; and

(ii) cooperates in all assessments and screening required by the department;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

(3) A person who has been convicted of a felony offense, an element of which involves the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is eligible for public assistance if the person is actively

complying with the conditions of supervision or has discharged the sentence associated with the felony conviction and if the person is actively participating in treatment, if required.

~~(3)~~(4) The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) an adult or a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;

(e) families in which the specified caretaker relative or other adult household member, as specified by the department by rule, fails or refuses to:

(i) cooperate in any required screening or assessment; or

(ii) enter into a family investment agreement required by the department under 53-4-606;

(f) teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

(g) teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

(h) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; *and*

(i) individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608. The ineligibility continues for a period of 10 years beginning on the date of conviction.

~~(j) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6).~~

~~(4)~~(5) A family is not eligible for financial assistance if the family includes an adult who has received financial assistance in a program funded under temporary assistance for needy families in any state or states for 60 months or more, whether or not the months are consecutive, unless an exception is expressly granted by federal law.

~~(5)~~(6) This part may not be interpreted to entitle any individual or family to assistance under programs funded by temporary assistance for needy families."

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 231

[SB 32]

AN ACT INCLUDING MINOR SIDEWALK REPAIR IN STREET MAINTENANCE DISTRICTS; AND AMENDING SECTION 7-12-4401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4401, MCA, is amended to read:

“7-12-4401. Street maintenance district authorized — definition. (1) Whenever the council of ~~any~~ a city or town desires to create a district for the maintenance of all or ~~any~~ part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing the maintenance and of paying for the maintenance under the restrictions and regulations provided in this part.

(2) “Maintenance” as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, leaf and debris removal, the operation, maintenance, and repair of traffic signal systems, the repair of traffic signs, the placement and maintenance of pavement markings, ~~and~~ curb and gutter repair, *and minor sidewalk repair that includes cracking, chipping, sinking, and replacement of not more than 6 feet of sidewalk in any 100-foot portion of sidewalk.*”

Approved April 15, 2005

CHAPTER NO. 232

[SB 38]

AN ACT DOUBLING THE PENALTIES FOR VIOLATION OF SPECIAL SPEED LIMITS IMPOSED NEAR SCHOOLS; PROVIDING THAT A PORTION OF MONEY COLLECTED FROM THE FINES BE USED FOR PURPOSES OF ERECTING SIGNS OR OTHER LAW ENFORCEMENT NEEDS; AND AMENDING SECTIONS 3-10-601, 46-17-402, AND 46-18-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Violating speed limit near school — penalty doubled — disposition of fines. (1) A person convicted of violating a special speed limit near a school imposed by a local authority pursuant to 61-8-310(1)(d) is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than double the penalty provided for the violation in 61-8-711.

(2) The fine proceeds must be allocated as follows:

(a) 50% of the fine collected must be distributed as provided in 3-10-601, 46-17-402, or 46-18-235; and

(b) 50% must be forwarded to the local authority that adopted the special speed limit as provided in 61-8-310(1)(d) for the purposes of erecting signs providing notification of the penalty or for other local law enforcement needs.

Section 2. Section 3-10-601, MCA, is amended to read:

“3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Except as provided in *[section 1]* and 75-7-123, a justice’s court shall collect the fees prescribed by law for justices’ courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in *[section 1]*, 75-7-123, and subsection (4) of this section, all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice’s court must, for each calendar month, be paid by the justice’s court on or before the 5th day of the following month to the treasurer of the county in which the justice’s court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7), *[section 1]*, and 75-7-123, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice’s court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice’s court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice’s court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice’s court may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the justice’s court must be added to the judgment amount.”

Section 3. Section 46-17-402, MCA, is amended to read:

“46-17-402. Fees and fines — collection. (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in *[section 1]* and subsection (2) of this section, all fees and fines collected by the court must be paid into the city treasury.

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court.

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment.”

Section 4. Section 46-18-235, MCA, is amended to read:

“46-18-235. Disposition of money collected as fines and costs. ~~The~~ Except as provided in *[section 1]*, the money collected by a court as a result of the

imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 must be paid:

(1) by the clerk of district court to:

(a) the department of revenue for deposit into the state general fund; or

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, and at the court's discretion, the drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from which the conviction and fine arose; and

(2) by a justice's court pursuant to 3-10-601."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 233

[SB 39]

AN ACT PROVIDING THAT A PERSON USING A WHEELCHAIR MUST BE CONSIDERED TO BE A PEDESTRIAN; CLARIFYING THAT WHEELCHAIRS ARE NOT VEHICLES OR MOTOR VEHICLES; PROVIDING, WITH CERTAIN EXCEPTIONS, THAT A PERSON USING A WHEELCHAIR IS SUBJECT TO THE PRIVILEGES AND RESTRICTIONS ACCORDED A PEDESTRIAN; REMOVING THE PROVISION ALLOWING THE USE OF CERTAIN WHEELCHAIRS TO BE REGULATED BY CITIES AND TOWNS; AMENDING SECTIONS 61-1-102, 61-1-103, 61-1-308, 61-8-501, AND 61-8-506, MCA; AND REPEALING SECTIONS 49-4-311 AND 49-4-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. (1) "Motor vehicle":

(a) means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state;

(b) for the purpose of chapter 3, includes trailers and semitrailers;

(c) for the purpose of chapter 3, parts 1 and 2, includes campers, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601.

(2) The term does not include a bicycle as defined in 61-1-123 *or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.*"

Section 2. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. (1) Except as provided in ~~subsection~~ *subsections (2) and (3)*, "vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(2) (a) In chapters 3 and 4, vehicle means “motor vehicle” as defined in this part.

(b) (i) In chapter 8, part 4, vehicle does not include a bicycle as defined in 61-1-123.

(ii) In chapter 8, part 4, except 61-8-440 through 61-8-442, vehicle includes a snowmobile.

(3) *The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.*

Section 3. Section 61-1-308, MCA, is amended to read:

“61-1-308. Pedestrian. “Pedestrian” means any person ~~on foot~~ *on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.*”

Section 4. Section 61-8-501, MCA, is amended to read:

“61-8-501. Pedestrians subject to traffic regulations. (1) A pedestrian shall obey the instructions of any traffic control device that is specifically applicable to the pedestrian unless otherwise directed by a police officer.

(2) Pedestrians are subject to traffic control signals and pedestrian control signals at intersections as provided in 61-8-207 and 61-8-208.

(3) At all other places, pedestrians are accorded the privileges and are subject to the restrictions provided in this part.

(4) Local authorities may by ordinance prohibit pedestrians from crossing a roadway within a local government’s jurisdiction, except in a marked crosswalk or in an unmarked crosswalk at an intersection.

(5) *Except as provided in 61-8-506(3) and except when provisions by their nature can have no application, a person operating a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person is accorded the privileges and is subject to the restrictions applicable to pedestrians provided in this part.*

Section 5. Section 61-8-506, MCA, is amended to read:

“61-8-506. Pedestrians on roadways and highways — wheelchair use on highways. (1) Where sidewalks are provided and their use is practicable, a pedestrian may not walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, a pedestrian, other than an intoxicated pedestrian referred to in 61-8-508, who is walking along and upon a highway may walk only on the shoulder, as far as practicable from the edge of the roadway.

(3) *A person using a wheelchair or other vehicle designed specifically for use by a physically disabled person shall use sidewalks if use of sidewalks is practicable. If use of sidewalks is unsafe or not practicable, the person may use the wheelchair or other vehicle on a highway, as far as practicable from the center of the roadway.*

Section 6. Repealer. Sections 49-4-311 and 49-4-312, MCA, are repealed.

Section 7. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definitions of “motor vehicle”, “vehicle”, and “pedestrian” in [this act] in the definitions of those terms in Senate Bill No. 285.

Approved April 15, 2005

CHAPTER NO. 234

[SB 76]

AN ACT ALLOWING THE LIMITED DEVELOPMENT OF LOST CREEK STATE PARK TO INCLUDE A CAMP HOST PAD; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-117, MCA, is amended to read:

“23-1-117. Limit on development of primitive parks. (1) ~~As of October 1, 1993, Except as permitted in Lost Creek state park for the limited purposes provided in subsection (3), the only development allowed in primitive parks designated in 23-1-116 is:~~

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, vaults, and water;

(b) improvements necessary to ensure the safe public use of existing boat ramps;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new hiking trails or improvement of existing hiking trails; and

(e) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park’s primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of new roads and paving of existing but previously unpaved roads.

(3) *Lost Creek state park may be developed to include a camp host pad, with necessary water, electric, and sewage disposal facilities to meet minimum public health standards for the camp host. The camp host pad must be completed by September 30, 2007, and must be accomplished in the least intrusive manner possible in order to retain the primitive character of Lost Creek state park as a whole, in keeping with the spirit of the Montana Primitive Parks Act.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 235

[SB 77]

AN ACT MAKING PERMANENT THE HUNTER MANAGEMENT AND THE HUNTING ACCESS ENHANCEMENT PROGRAMS, WHICH ENCOURAGE PUBLIC ACCESS TO PRIVATE AND PUBLIC LANDS FOR HUNTING PURPOSES BY PROVIDING INCENTIVES TO LANDOWNERS AND BY PROVIDING RESTRICTIONS ON LANDOWNER LIABILITY; MAKING PERMANENT THE PROGRAMS' FUNDING SOURCES FROM VARIOUS LICENSE FEES; MAKING PERMANENT THE PRIVATE LANDS/PUBLIC WILDLIFE REVIEW COMMITTEE AND REQUIRING BIENNIAL REPORTS ON PROGRAM SUCCESS AND COMMITTEE SUGGESTIONS; AMENDING SECTION 87-1-269, MCA, SECTION 18, CHAPTER 459, LAWS OF 1995, AND SECTION 6, CHAPTER 544, LAWS OF 1999; REPEALING SECTION 8, CHAPTER 544, LAWS OF 1999, SECTION 9, CHAPTER 216, LAWS OF 2001, AND SECTION 29, CHAPTER 407, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-269, MCA, is amended to read:

“87-1-269. ~~(Temporary)~~ Report required — review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(b) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. ~~(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)”~~

Section 2. Section 18, Chapter 459, Laws of 1995, is amended to read:

“Section 18. Termination. (1) ~~[Sections 1 through 10] terminate October 1, 2001.~~

~~(2)~~ [Section 11] terminates ~~June 30, 1999~~ *July 1, 2002*.”

Section 3. Section 6, Chapter 544, Laws of 1999, is amended to read:

“**Section 6.** Section 18, Chapter 459, Laws of 1995, is amended to read:

“**Section 18. Termination.** (1) ~~[Sections 1 through 10] terminate October 1, 2001~~ *March 1, 2006*.

~~(2)~~ [Section 11] terminates ~~June 30, 1999~~ *July 1, 2002*.””

Section 4. Repealer. Section 8, Chapter 544, Laws of 1999, section 9, Chapter 216, Laws of 2001, and section 29, Chapter 407, Laws of 2001, are repealed.

Section 5. Coordination instruction. If House Bill No. 56 is not passed and approved, then [section 1 of this act] is void and 87-1-269 must be amended as follows:

“**87-1-269. ~~(Temporary)~~ Report required — review committee.** (1) The governor shall appoint a committee of persons interested in issues related to hunters, ~~anglers~~, landowners, and outfitters, including but not limited to the hunting access enhancement program, ~~the fishing access enhancement program~~, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) ~~(a)~~ The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

~~(b) The review committee shall report to the governor and to the 58th legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.~~

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program ~~and the fishing access enhancement program~~ and to advise the commission regarding the development of rules implementing the hunting access enhancement program ~~and the fishing access enhancement program~~. ~~(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)~~”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 236

[SB 95]

AN ACT DEFINING THE TERM “OIL OR GAS WELL FACILITY”;
DELAYING THE REQUIREMENT TO APPLY FOR AN AIR QUALITY

PERMIT FOR AN OIL OR GAS WELL FACILITY TO JANUARY 3, 2006, OR 60 DAYS AFTER THE INITIAL WELL COMPLETION DATE, WHICHEVER IS LATER; REQUIRING ADOPTION OF RULES TO REGULATE FACILITIES UNTIL A PERMIT IS ISSUED; TRANSFERRING RULEMAKING AUTHORITY FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-218, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-103, MCA, is amended to read:

“75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advisory council” means the air pollution control advisory council provided for in 2-15-2106.

(2) “Air contaminant” means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) “Air pollutants” means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) “Air pollution” means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) “Board” means the board of environmental review provided for in 2-15-3502.

(6) (a) “Commercial hazardous waste incinerator” means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) “Department” means the department of environmental quality provided for in 2-15-3501.

(8) “Emission” means a release into the outdoor atmosphere of air contaminants.

(9) “Environmental protection law” means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) “Hazardous waste” means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (13)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(13)~~(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(14)~~(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(15)~~(16) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(16)~~(17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

Section 2. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), ~~and 75-2-234, and subsections (2)(b) and (2)(c) of this section,~~ not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(b) *Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:*

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a

single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a

department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), ~~and 75-2-234~~, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) *Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:*

(i) *for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and*

(ii) *for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.*

(c) *An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.*

(d) *The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.*

(e) *The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.*

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a

single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department.”

Section 3. Section 75-2-218, MCA, is amended to read:

“75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department’s receipt of the application. The department may request additional information after a completeness determination has been made. ~~The department~~ *board* shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant’s failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant’s existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant’s failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed

within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 4. Effective date. [This act] is effective January 1, 2006.

Approved April 15, 2005

CHAPTER NO. 237

[SB 126]

AN ACT REQUIRING THE OWNER OF A MOTORBOAT, SAILBOAT, OR PERSONAL WATERCRAFT TO VERIFY USE OF THE ORIGINAL IDENTIFYING NUMBER EVERY 3 YEARS BY OBTAINING VALIDATION DECALS AT NO COST; REQUIRING THE OWNER OF A VESSEL TO AFFIX THE VALIDATION DECALS TO THE FORWARD HALF OF THE VESSEL; ESTABLISHING LIMITS ON PENALTIES FOR NONCOMPLIANCE; DEFINING "VALIDATION DECAL"; ALLOWING ALL NEW OWNERS 40 DAYS TO OBTAIN AND DISPLAY REGISTRATION AND VALIDATION DECALS AND TO APPLY FOR A NEW CERTIFICATE OF NUMBER; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO

PAY FOR INITIAL PROGRAMMING COSTS; AMENDING SECTIONS 23-2-502, 23-2-511, 23-2-512, AND 23-2-513, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-502, MCA, is amended to read:

“23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) “Certificate of number” means the certificate issued by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning the motorboat an identifying number and containing other information as required by the department of justice.

(2) “Dealer” means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(3) “Department” means the department of fish, wildlife, and parks of the state of Montana.

(4) “Documented vessel” means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) “Identifying number” means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(6) “Lienholder” means a person holding a security interest.

(7) “Manufacturer” means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(8) (a) “Motorboat” means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(9) “Operate” means to navigate or otherwise use a motorboat or a vessel.

(10) “Operator” means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (a) “Owner” means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(12) “Passenger” means each person carried on board a vessel other than:

(a) the owner or the owner’s representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(13) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(15) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of all fees *in lieu of tax* imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the ~~sticker~~ *decal* as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "*Validation decal*" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

~~(19)~~(20) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(21) "Waters of this state" means any waters within the territorial limits of this state."

Section 2. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of registration and validation decals decal. (1) A motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display a valid registration ~~and validation decal~~ *decal*. A person may not operate or give permission for the operation of any motorboat on the waters of this state unless the motorboat is numbered and

displays a valid registration *and validation decal decals* in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

- (a) the certificate of number assigned to the motorboat is in effect;
- (b) the identifying number set forth in the certificate of number and the valid license decals are displayed on the motorboat; and
- (c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat ~~from a registered boat dealer or manufacturer~~, the transferred motorboat may be operated on the waters of this state for ~~30~~ 40 consecutive calendar days immediately following the transfer of ownership without displaying the ~~numbers and~~ registration *and validation decal decals* required by subsection (1) if when the motorboat is operated during those ~~30~~ 40 consecutive calendar days, a bill of sale or other evidence of transfer ~~reciting showing~~ the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.”

Section 3. Section 23-2-512, MCA, is amended to read:

“23-2-512. Identifying number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of \$3.50 in calendar year 2004 and, in each subsequent year, \$15.50. Any alteration, change, or false statement contained in the application renders the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner. *Validation decals verifying the identifying number for each motorboat, sailboat, or personal watercraft must be issued along with the certificate of number and must be displayed on the motorboat, sailboat, or personal watercraft.*

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required under 23-2-517 for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft before the application for certification or, if applicable, recertification may be accepted by the county treasurer.

(3) *The fine for failing to display the validation decals may not be more than the cost incurred by the justice court.*

(4) *The department may give only verbal or written warnings until December 31, 2007, for failing to display validation decals in an attempt to educate the boating public.*

~~(3)~~(5) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within ~~a reasonable time~~ 40 days with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number. *New validation decals must be issued simultaneously.*

~~(4)~~(6) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

~~(5)~~(7) A certificate of number and ~~a registration validation decal~~ *decal* issued under this part are effective unless terminated or discontinued in accordance with the provisions of this part. *All motorboats, sailboats, or personal watercraft already numbered must exhibit validation decals by December 31, 2005. All validation decals expire on February 28, 2008. Validation decals must be obtained by the expiration date at any regional office of the department or through the department website and are in effect for another 3-year period ending February 28, 2011. The requirement of renewal validation decals must continue in subsequent 3-year periods, and renewal validation decals must be identified by color in accordance with the federal numbering system. Except as provided in 23-2-511(2) and subsection (5) of this section, the operation of a motorboat, sailboat, or personal watercraft is prohibited without current validation decals.*

(8) *Validation decals must be approximately 3 square inches. The validation decals must be serially numbered in accordance with the federal numbering system and must be displayed on each side of the vessel.*

~~(6)~~(9) If ownership is transferred, the purchaser shall notify the county treasurer within ~~a reasonable time~~ *40 days* of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

~~(7)~~(10) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

~~(8)~~(11) (a) The *identifying* number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The *identifying* number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The *identifying* number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner

that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the *identifying* number assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft. A registration decal issued under this part must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck of the motorboat, sailboat, or personal watercraft. *The validation decal must be placed immediately aft of the registration decal on the left side and immediately aft of the identifying number on the right side of a motorboat, sailboat, or personal watercraft.*

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(9)(12) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

~~(10)~~(13) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name if the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States.

(14) *The department shall reimburse the department of justice for any programming costs necessary to implement the provisions of this section that are incurred in fiscal year 2005.*

Section 4. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's or manufacturer's identifying number — premises — inspection — bond — judgment — temporary registration permit. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number *and the registration decal* must be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, ~~or~~ exchanging, *or performance testing* of the boat by the dealer, ~~or~~ manufacturer, *or potential buyer*.

(2) The application for a dealer's or manufacturer's identifying number must include the dealer's or manufacturer's name and business address. Each dealer or manufacturer must have one identifying number assigned to the dealer's or manufacturer's business.

(3) An application for a dealer's or manufacturer's identifying number and a certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and registration decal, \$5;

(b) for each additional certificate of number and registration decal applied for in any application, \$2.

(4) The department of justice shall issue certificates of number for the identifying number assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) ~~and (8)~~, except that a boat may not be described in a certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number *and the registration decal* must be displayed in the same manner as provided in 23-2-512(8), except that the number may be temporarily attached. The last three letters must be "DLR" for dealer and "MFR" for manufacturer. These letters must be included, respectively, in dealer or manufacturer identification numbers.

(6) ~~A person other than a dealer or manufacturer or an employee of a dealer or manufacturer may not display or use a dealer's or manufacturer's identifying number.~~ A dealer's or manufacturer's identifying number *and the registration decal* may be displayed only on motorboats or sailboats that are for sale, owned, or on consignment by the dealer or manufacturer. *Consignment boats displaying a dealer's or a manufacturer's identifying number and a registration decal must have a signed and dated consignment contract available for verification that the boat is on consignment.*

(7) A dealer or manufacturer or an employee of a dealer or manufacturer may not use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1).

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where all business records are maintained and where the dealer displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to ensure compliance with this section.

(9) To qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that the dealer sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of \$50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with the application a bond of \$5,000. The bond must be conditioned that the applicant will conduct the business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage because of the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

(11) Prior to the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in 61-1-603. The temporary registration permit expires ~~30~~ 40 days after the date

of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice. *The dealer shall remove any registration decal prior to selling any used boat.*"

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 238

[SB 206]

AN ACT PROVIDING THAT THE PAY INCREASE FOR THE FIRST COMPLETE PAY PERIOD THAT INCLUDES JANUARY 1, 2005, APPLIES TO ALL STATE EMPLOYEES; ENSURING THAT STATE EMPLOYEES WHO WERE PAID LESS THAN 25 CENTS PER HOUR LESS THAN THE MAXIMUM SALARY ACCORDING TO THE PAY SCHEDULE CONTAINED IN 2-18-312, MCA, WILL CONTINUE TO RECEIVE THE FULL BENEFIT OF THE PAY INCREASE FOR ALL STATE EMPLOYEES THAT OCCURRED ON JANUARY 1, 2005; AMENDING SECTION 2-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through (9).

(c) On the first day of the first complete pay period in fiscal year 2004, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2003.

(d) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour ~~or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f).~~

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) ~~The Subject to subsection (1)(d),~~ the maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount *plus an amount equal to 25 cents an hour* to the market salary.

(2) The pay schedule provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.

(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.

(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.

(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 2005.

Approved April 15, 2005

CHAPTER NO. 239

[SB 214]

AN ACT CLARIFYING THE DAMAGES TO BE AWARDED FOR THE TAKING OF TIMBER WITHOUT LAWFUL AUTHORITY; STATING THE DAMAGES FOR AN INADVERTENT TAKING; STATING THE DAMAGES FOR A TAKING BY PUBLIC OFFICERS OR EMPLOYEES FOR THE PURPOSES OF A HIGHWAY; STATING THE DAMAGES FOR A WILLFUL, WANTON, OR MALICIOUS TAKING; AMENDING SECTION 70-16-107, MCA; AND REPEALING SECTION 70-16-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-16-107, MCA, is amended to read:

"70-16-107. Trespass for taking timber. ~~(1) Any~~ A person who cuts down or carries off any wood, ~~or~~ underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person, ~~or~~ on the street or highway in front of any person's house, ~~or village town~~ or city lot, ~~or~~ on cultivated grounds or on the commons or public grounds of any city or town, or on the street or highway ~~in front thereof~~ of any city or town, without lawful authority, is liable to the owner of ~~such~~ the land or to ~~such~~ the city or town for:

(1) *the amount of the damages incurred if the trespass was casual and inadvertent or committed under the belief that the land belonged to the trespasser or if the wood was taken by the authority of state or local government officers or employees for the purposes of a highway; or*

(2) *for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction incurred if the trespass was willful, wanton, or malicious.*

~~(2) Nothing in subsection (1) authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it."~~

Section 2. Repealer. Section 70-16-108, MCA, is repealed.

Approved April 15, 2005

CHAPTER NO. 240

[SB 225]

AN ACT AUTHORIZING COUNTIES, CITIES, AND TOWNS TO INVEST IN CERTIFICATES OF DEPOSIT IN IN-STATE FEDERALLY INSURED FINANCIAL INSTITUTIONS THAT ARRANGE FOR THE DEPOSIT OF FUNDS IN OTHER FEDERALLY INSURED FINANCIAL INSTITUTIONS ON A RECIPROCAL BASIS; AMENDING SECTION 7-6-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-206, MCA, is amended to read:

"7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) *In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:*

(a) *the money is initially invested through a federally insured financial institution in the state selected by the governing body;*

(b) *the selected in-state financial institution arranges for the deposit of the funds in certificates of deposit for the account of the county, city, or town in one or more federally insured financial institutions, regardless of location;*

(c) *the full amount of principal and accrued interest on each certificate of deposit is covered by federal deposit insurance;*

(d) *the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the certificates of deposit issued for its account; and*

(e) *at the same time that the county, city, or town money is deposited and the certificates of deposit are issued, the selected in-state financial institution receives an amount of deposits from customers of other federally insured*

financial institutions, regardless of location, equal to or greater than the amount of money initially invested by the county, city, or town through the selected in-state financial institution.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 241

[SB 244]

AN ACT ALLOWING RECREATIONAL VEHICLES AND CAMPERS USED FOR NONCOMMERCIAL PURPOSES TO EXCEED VEHICLE WIDTH LIMITS UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF “TRAVEL TRAILER”; AMENDING SECTIONS 61-1-129, 61-1-131, 61-1-132, AND 61-10-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-129, MCA, is amended to read:

“61-1-129. Camper. (1) The term “camper” as used in 61-1-102 and 61-10-102 includes but is not limited to truck camper, chassis-mounted camper, cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(2) The term does not include a truck canopy cover or topper.”

Section 2. Section 61-1-131, MCA, is amended to read:

“61-1-131. Travel trailer. “Travel trailer” as used in 61-1-132, 61-3-521, and 61-3-523 means a ~~trailer vehicle~~:

(1) ~~that is 45 40 feet or less in length; and 8 feet or less in width originally designed or permanently altered~~

(2) *that is of a size or weight that does not require special permits when towed by a motor vehicle;*

(3) *with gross trailer area of less than 320 square feet; and*

(4) *that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.”*

Section 3. Section 61-1-132, MCA, is amended to read:

“61-1-132. Recreational vehicle. The term “recreational vehicle” as used in chapter 4, part 1, of this title, 61-10-102, and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.”

Section 4. Section 61-10-102, MCA, is amended to read:

“61-10-102. Width. (1) Except as provided in ~~subsection (2)~~ subsections (2) and (3), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is

incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) (a) *The width of a recreational vehicle, as defined in 61-1-132, and a camper, as defined in 61-1-129, that is being operated for noncommercial purposes may exceed 102 inches if:*

(i) *the excess width is attributable to recreational vehicle or camper appurtenances that do not extend beyond the exterior rearview mirrors of the recreational vehicle, the camper, a vehicle being towed by the recreational vehicle, or the motor vehicle providing motive power; and*

(ii) *the rearview mirrors extend only the distance necessary to provide the appropriate field of view for the vehicle before the recreational vehicle or camper appurtenances are attached.*

(b) *For the purposes of this section, "recreational vehicle or camper appurtenances" means an awning and its support hardware or any appendage*

that is intended to be an integral part of the recreational vehicle or camper and that is installed by the manufacturer or dealer.

~~(3)~~(4) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

~~(4)~~(5) For the purposes of this section, "county road" has the same meaning as ~~the term is defined~~ provided in 60-1-103."

Section 5. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definition of "travel trailer" in [this act] in the definition of that term in Senate Bill No. 285.

Section 6. Effective date. [This act] is effective May 1, 2005.

Approved April 15, 2005

CHAPTER NO. 242

[SB 264]

AN ACT PROHIBITING ARREST OR CITATION QUOTAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Arrest or citation quotas prohibited. (1) A state or local government agency employing a peace officer may not adopt and require a peace officer to comply with a quota and may not suggest a quota for arrests or citations for any criminal offense or class of criminal offenses, including violations of traffic or motor vehicle laws, contained in state law, an administrative rule adopted by an agency of the state government, or a local government ordinance.

(2) (a) For purposes of this section, "quota" means a specific number of arrests or citations.

(b) The term does not include the use of generally accepted management techniques that employ performance objectives as part of an overall employee evaluation.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, part 4, and the provisions of Title 46, chapter 6, part 4, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 243

[SB 282]

AN ACT REVISING THE LAW PROHIBITING RACIAL PROFILING; REQUIRING WRITTEN POLICIES AND COMPLAINT PROCEDURES; REQUIRING TRAINING FOR LAW ENFORCEMENT OFFICERS; AND AMENDING SECTION 44-2-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-117, MCA, is amended to read:

“44-2-117. Racial profiling prohibited — definitions — policies — complaints — training. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, *require that all stops are lawful under 46-5-401, and require that all stops are documented according to the agency's standard policies and procedures.*

(b) The policy must include a procedure that the law enforcement agency will use to address *written* complaints concerning racial profiling. *The complaint procedure must require that:*

(i) *all written complaints concerning racial profiling be promptly reviewed;*

(ii) *a person is designated who shall review all written complaints of racial profiling;*

(iii) *the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and*

(iv) *after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.*

(c) The policy must be available for public inspection during normal business hours.

(4) *Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness training and training in racial profiling. The training program must be certified by the peace officers' standards and training advisory council.*

~~(4)~~(5) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

~~(5)~~(6) For the purposes of this section, the following definitions apply:

(a) “Peace officer” has the meaning provided in 46-1-202.

(b) “Racial profiling” means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

(7) *The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.”*

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 15, 2005

CHAPTER NO. 244

[SB 286]

AN ACT REVISING CERTAIN NOTIFICATION AND RETAINAGE PROVISIONS WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS 28-2-2104 AND 28-2-2110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-2104, MCA, is amended to read:

“28-2-2104. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) ~~Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made. Acceptance of progress payments or final payment releases any claim for interest on the payment.”~~

Section 2. Section 28-2-2110, MCA, is amended to read:

“28-2-2110. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5% ~~10% if the construction contractor is performing by the terms of the contract.~~

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

(3) *Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the construction contract.*

Approved April 15, 2005

CHAPTER NO. 245

[SB 298]

AN ACT ADDRESSING THE PRODUCTION OF FISH AT AND PLANTING OF FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY; CLARIFYING THAT PRODUCTION OF FISH SPECIES AT THE FORT PECK MULTISPECIES FISH HATCHERY INCLUDES PALLID STURGEON, PADDLEFISH, AND CERTAIN CLASSIFIED WARM WATER SPECIES; PROVIDING THAT ANY WATERS LISTED IN THE 2005 MONTANA FISHING REGULATIONS THAT REQUIRE A WARM WATER STAMP AND WATERS PLANTED WITH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY BE PERMANENTLY INCLUDED IN THE LIST OF WATERS FOR WHICH A WARM WATER GAME FISH STAMP IS REQUIRED; AMENDING SECTIONS 87-3-235 AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-235, MCA, is amended to read:

“87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the hatchery must be by the department, consistent with the department’s authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) Warm water species to be propagated at the hatchery may include largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Stizostedion vitreum*), sauger (*Stizostedion canadense*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), *pallid sturgeon* (*Scaphirhynchus albus*), *paddlefish* (*Polyodon spathula*), tiger muskellunge, *other warm water species classified as species of special concern, threatened, or endangered*, and bait fish, including cisco (*Coregonus artedii*). The hatchery may also include raceways for salmon.

(4) Costs for hatchery construction, operation, maintenance, and personnel are to be funded with revenue in the warm water game fish accounts established in 87-3-236. It is intended that the hatchery be constructed in stages as revenue becomes available in the warm water game fish accounts established in 87-3-236.”

Section 2. Section 87-3-236, MCA, is amended to read:

“87-3-236. Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish for warm water game fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish for warm water game fish as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, “warm water game fish” includes but is not limited to all species of the genera *Stizostedion*, *Esox*, *Micropterus*, and *Lota* and includes largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Stizostedion vitreum*), sauger (*Stizostedion canadense*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), *pallid sturgeon* (*Scaphirhynchus albus*), *paddlefish* (*Polyodon spathula*), *other warm water species classified as species of special concern, threatened, or endangered, chinook salmon* (*Oncorhynchus tshawytscha*), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the construction, operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include a cost-share agreement with the federal government for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005, for the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. *All waters listed in the 2005 Montana fishing regulations that require a warm water stamp and waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be permanently included on the list.* The waters designated in the list are the only waters for which a warm water game fish stamp is required.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 246

[SB 322]

AN ACT PROVIDING FOR THE DUTY OF A HEALTH CARE PROVIDER WHO PERFORMS A MEDICAL EXAM AT THE REQUEST OF A PARTY OTHER THAN THE EXAMINEE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Duty of health care provider performing third-party medical examination. A health care provider who is retained by a third party to perform a medical examination and advises the examinee about a medical condition during or after the examination has an obligation to exercise ordinary care to ensure that the advice complies with the standard of care for the health care provider’s profession, but has no duty to discover the presence of an unrelated medical condition. The health care provider has an obligation to inform the examinee of likely diagnoses that the health care provider reasonably considers. A health care provider who provides actual medical care or treatment incident to a third-party medical examination shall exercise the standard of care that the health care provider would have exercised if the examinee had retained the health care provider. For purposes of this section, “health care provider” has the meaning provided in 27-6-103.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Applicability. [This act] applies to medical examinations performed after July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 247

[SB 325]

AN ACT REVISING THE PROVISION OF INTERIOR ADVERTISING MATERIAL BY BREWERS, BEER IMPORTERS, AND WHOLESALERS TO RETAILERS; AND AMENDING SECTION 16-3-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-241, MCA, is amended to read:

"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions. (1) (a) It ~~shall be~~ is unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, ~~signs~~, or any other advertising matter or any other property to ~~any a~~ retail licensee, used or to be used in the dispensation of beer in and about the interior ~~or exterior~~ of the place of business of ~~any the~~ licensed retailer, or to furnish, give, or pay for any repairs, improvements, ~~or painting, or decorating~~ on or within ~~such the~~ premises; ~~provided, however, that it~~

(b) It ~~shall be~~ is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(a)(i) bottle openers, can openers, ~~and~~ trays, ~~tap handles, menus, apparel, coasters, glassware, cups, napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any one retail establishment for display use on the interior of the retail establishment; with or without advertising matter thereon;~~

(b) ~~advertising matter or novelties, of a value of not to exceed \$50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;~~

(c) ~~not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and~~

(ii) ~~not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture. Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has been in the retailer's possession for more than 9 months.~~

(iii) ~~permanent or temporary advertising matter of a decorative nature, excluding items described in subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and~~

(d)(iv) ~~maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.~~

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of draft beer to a special permittee or a retailer for use:

(a) in catering an event ~~that is off his~~ the permittee's or retailer's regular premises; or

(b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours."

Approved April 15, 2005

CHAPTER NO. 248

[SB 329]

AN ACT CLARIFYING THE STATE'S ROLE IN PROMOTING "MADE-IN-MONTANA" PRODUCTS; AND AMENDING SECTION 90-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-105, MCA, is amended to read:

"90-1-105. Functions of department of commerce — economic development. The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as ~~the state's~~ *an official state liaison* between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new business or expanding existing business;

(5) (a) study and promote means of expanding markets for Montana products; *and*

(b) *provide training and assistance for Montana small businesses and entrepreneurs to expand markets for made-in-Montana products;*

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the state's Indian reservations; and

(8) assist the state-tribal economic development commission established in 90-1-131 in:

(a) identifying federal government and private sector funding sources for economic development on Indian reservations in Montana; and

(b) fostering and providing assistance to prepare, develop, and implement cooperative agreements, in accordance with Title 18, chapter 11, part 1, with each of the tribal governments in Montana. (Subsection (8) terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)"

Approved April 15, 2005

CHAPTER NO. 249

[SB 335]

AN ACT REVISING THE BLIND VENDOR VOCATIONAL OPPORTUNITIES PROGRAM TO INCLUDE MILITARY RESERVATIONS; AND AMENDING SECTION 18-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-5-402, MCA, is amended to read:

“18-5-402. Definitions. As used in this part, the following definitions apply:

(1) “Blind person” means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle ~~no~~ *that is not* greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) “Blind vendor” means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) “Certified blind person” means a blind person whom the department has determined to be a blind person as defined in this part, who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) “Department” means the department of public health and human services.

(5) “Federal property” means buildings or portions of buildings or other real property owned or leased by the federal government ~~excluding military reservations~~ upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) “Other property” means all real property other than state or federal property as defined in this part.

(7) “State property” means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement; or, in the case of a building, leased in its entirety by the state or agencies of the state ~~that are and utilized~~ *used* in the conduct of state matters and occupied principally by state employees. ~~State property for the purpose of this part does not include vocational institutions or institutions of higher education. State property for the purpose of this part does not include vocational institutions or institutions of higher education.~~

(8) “Vending facility” means an area and equipment inclusive of vending machines on state property ~~which~~ *that* is or may be ~~utilized~~ *used* in providing a food, beverage, or other service to employees and other persons present on the property.

(9) (a) “Vending machine” means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. ~~Vending machine~~

(b) *The term* does not include postage stamp machines or coin-operated telephones.

(10) “Vocational rehabilitation programs” means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.”

Approved April 15, 2005

CHAPTER NO. 250

[SB 347]

AN ACT REVISING LOBBYING REPORTING REQUIREMENTS FOR PRINCIPALS; AND AMENDING SECTION 5-7-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-208, MCA, is amended to read:

"5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying. A principal is subject to the reporting requirements of this section only if the principal makes *total* payments ~~exceeding~~ *for the purpose of lobbying that exceed* the amount specified under 5-7-112 ~~to one or more lobbyists~~ during a calendar year.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month.

(4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a), the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee ~~which~~ *that* amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years."

Approved April 15, 2005

CHAPTER NO. 251

[SB 349]

AN ACT PROVIDING THAT AN INSURANCE COMPANY MAY NOT REQUIRE A PERSON ENTITLED TO A CAR RENTAL WHILE THE PERSON'S OWN CAR IS BEING REPAIRED TO SELECT ANY ONE CAR RENTAL BUSINESS; AND PROVIDING THAT AN INSURANCE COMPANY THAT PROVIDES FOR DIRECT PAYMENT TO ANY ONE OR MORE CAR RENTAL BUSINESSES IN THIS STATE MUST PROVIDE FOR DIRECT PAYMENT TO ANY CAR RENTAL BUSINESS CHOSEN BY A PERSON FOR WHOM THE INSURANCE COMPANY IS OBLIGATED TO PROVIDE A CAR RENTAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Designation of specific car rental business prohibited. (1)

An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person, whether or not insured by the insurance company, for whom the insurance company is obligated to provide a car rental while the person's own car is being repaired use a particular car rental business; or

(b) engage in any act or practice that intimidates, coerces, or threatens a person to use a particular car rental business.

(2) (a) An insurance company that is subject to the provisions of this section and that provides for direct payment to any one or more car rental businesses in this state must provide for direct payment to any car rental business selected by a person described in subsection (1)(a).

(b) For the purposes of this section, "direct payment" means a method by which an insurance company makes a direct payment on behalf of an insured or

a third party either through electronic means or by check to a car rental business.

(c) The insurance company may approve the daily rate to be paid by the insurance company based on the car classification.

(d) The insurance company is not obligated to pay more to the car rental business than is provided in the insured's policy limits pursuant to 33-23-203.

(3) This section does not require an insurer to pay more for a comparable car rental than the lowest price negotiated between a car rental business and the insurer.

(4) This section does not prohibit an insurer, its producers, or its adjusters from providing to a customer the name of a car rental business with which arrangements may have been made to provide car rental services as long as the ultimate choice is left to the person described in subsection (1)(a).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 252

[SB 350]

AN ACT PROVIDING THAT DIVISIONS OF LAND THAT ARE EXEMPT FROM REVIEW AS SUBDIVISIONS ARE SUBJECT TO APPLICABLE LOCAL ZONING REGULATIONS; AND AMENDING SECTION 76-3-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-207, MCA, is amended to read:

"76-3-207. ~~Subdivisions~~ Divisions of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions *and are subject to applicable zoning regulations adopted under Title 76, chapter 2:*

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."

Approved April 15, 2005

CHAPTER NO. 253

[SB 352]

AN ACT CLARIFYING THE INADMISSIBILITY OF MEDICAL MALPRACTICE LEGAL PANEL DECISIONS AND THE BASIS FOR THEM; AMENDING SECTION 27-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) A panel member may not be called to testify in a proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision and the reasoning and basis for the decision of the panel are not admissible as evidence in an action subsequently brought in a court of law

and are not evidence for any purpose in an action brought under 33-18-201, 33-18-242, or common law.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Section 3. Applicability. [This act] applies to causes of action that arise on or after [the effective date of this act].

Approved April 15, 2005

CHAPTER NO. 254

[SB 355]

AN ACT REVISING THE PAYMENT OF TRANSCRIPT FEES TO COURT REPORTERS IN CRIMINAL CASES; AMENDING SECTION 3-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, stenographic court reporters are important to the efficient functioning of the courts and save the court time and money during trial and appeals; and

WHEREAS, in 2001, the state assumed the costs of funding District Courts; and

WHEREAS, as part of state assumption, court reporters were given the option of becoming state employees, foregoing transcript fees, having the state provide and maintain all equipment and supplies, and receiving overtime for time spent in transcript preparation; becoming state employees, purchasing and maintaining their own equipment, receiving transcript fees, and foregoing overtime for time spent in transcript preparation; or being independent contractors; and

WHEREAS, the court reporters in this state entered into written agreements that incorporated the options available to them under the 2001 state assumption; and

WHEREAS, the Legislature, in 2003, changed the law relating to compensation of court reporters and provided that all reporters shall provide transcripts to County Attorneys and the Attorney General at “actual cost”, which has been interpreted by the District Court Council as meaning the cost of paper, printing, and photocopying.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-604, MCA, is amended to read:

“3-5-604. Court reporters — transcript of proceedings — costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party’s attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) ~~(a)~~ If the *county attorney, attorney general, or judge* requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the state as provided in 3-5-901.

~~(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.~~

(4) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(5) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state as provided in 3-5-901."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 255

[SB 363]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SPECIAL EDUCATION; CLARIFYING THAT SCHOOL DISTRICTS MAY OFFER SPECIAL EDUCATION PROGRAMS FOR STUDENTS WHO ARE OUTSIDE OF THE REQUIRED AGES; REMOVING REQUIREMENTS THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION RECOMMEND AND APPROVE SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS; REPLACING THE TERM "DIAGNOSING" WITH "IDENTIFYING"; REVISING SPECIAL EDUCATION TUITION AND TRANSPORTATION STATUTES TO BE CONSISTENT WITH OTHER TUITION AND TRANSPORTATION STATUTES; CLARIFYING THAT SCHOOL DISTRICTS DO NOT NEED APPROVAL TO PROVIDE A FREE AND APPROPRIATE EDUCATION FOR SPECIAL EDUCATION STUDENTS; ENSURING THAT SCHOOL DISTRICTS MAY RECEIVE FUNDING FOR SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES WHO ARE UNDER 6 YEARS OF AGE; SHORTENING THE TIME PERIOD FOR APPOINTING A SURROGATE PARENT; MAKING THE REVISIONS NECESSARY TO COMPLY WITH THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-402, 20-7-403, 20-7-411, 20-7-414, 20-7-420, 20-7-431, 20-7-443, 20-7-461, AND 20-10-144, MCA; REPEALING SECTIONS 20-7-412, 20-7-441, AND 20-7-442, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-402, MCA, is amended to read:

"20-7-402. Special education to comply with board policies. (1) The conduct of special education programs ~~shall~~ *must* comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies ~~shall assure~~ *must ensure* and include but are not limited to:

- (a) placement of a child with a disability in the least restrictive ~~alternative setting environment~~;
 - (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;
 - (c) use of ~~child study teams~~ *an evaluation team* to identify a child with a disability and ~~use of instructional teams~~ to plan individual education programs;
 - (d) ~~comprehensive evaluation for each child with a disability~~ *an evaluation process consistent with the requirements of the Individuals with Disabilities Education Act*; and
 - (e) other policies needed to ensure a free appropriate public education.
- (2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education."

Section 2. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) ~~recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs~~ *technical assistance documents to assist local districts in implementing special education policies and procedures*;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in ~~diagnosing~~ *identifying* the special education needs of children, in planning programs, and in admitting and discharging children from those programs;
- (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;
- (8) ~~approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction~~;
- (9)(8) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10)(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (11)(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the

need to seek competent legal assistance in implementing hearing or appeal procedures;

~~(12)~~(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, *including a homeless child with a disability*, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

~~(13)~~(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

~~(14)~~(13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital."

Section 3. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive ~~alternative setting environment~~. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability ~~between the ages of 6 and 18, inclusive~~ *who is 6 years of age or older and under 19 years of age*.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability ~~between the ages of 3 and 6, inclusive~~ *who is 3 years of age or older and under 7 years of age*.

(4) (a) *The board of trustees of a school district may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.*

(b) *Programs established pursuant to subsection (4)(a) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.*

~~(4)~~(5) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

~~(5)~~(6) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Section 4. Section 20-7-414, MCA, is amended to read:

"20-7-414. Determination of children in need and type of special education needed — ~~approval of classes and programs by superintendent.~~ (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, *in accordance with 20-7-411*, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

~~(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education. The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals with Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction."~~

Section 5. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed ~~by a state agency~~ in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the

services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 6. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state ~~child study~~ *evaluation* team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education-related services personnel who travel on an itinerant basis from school to school or district to district or to in-state ~~child study~~ *evaluation* team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, or the federal social security system or the costs for unemployment compensation insurance.

(5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations. However, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation."

Section 7. Section 20-7-443, MCA, is amended to read:

"20-7-443. Financial assistance for under-six-year-old special education class or program. Any district ~~operating an approved special education class or program~~ *providing special education services* for children under the age of 6 years ~~shall be of age~~ *is eligible* for financial assistance in accordance with 20-7-431 and for transportation reimbursement ~~under 20-7-442 in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction.~~"

Section 8. Section 20-7-461, MCA, is amended to read:

"20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents

cannot be discovered or if the child is a ward of the state. ~~The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.~~ *Within 10 days of determining that a child is in need of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court.*

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within ~~45~~ 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. *If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.*

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment."

Section 9. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the

total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, ~~except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and~~

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under section 244, Chapter 574, Laws of 2001;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 10. Repealer. Sections 20-7-412, 20-7-441, and 20-7-442, MCA, are repealed.

Section 11. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 256

[SB 365]

AN ACT EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES THROUGH DECEMBER 31, 2009; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. These universal system benefits charge rates must remain in effect through December 31, ~~2005~~ 2009.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility’s internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers’ programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility’s distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer’s distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility’s or a large customer’s credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility’s transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility’s level of contribution to each program.

(5) A utility’s minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility’s annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility’s low-income energy assistance annual funding requirement for the utility’s internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 257

[SB 368]

AN ACT ELIMINATING THE REQUIREMENT, WITH RESPECT TO THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND, THAT AN EMPLOYER HIRING OR RETAINING A CERTIFIED PERSON WITH A DISABILITY FILE INFORMATION WITH THE DEPARTMENT; PROVIDING CONDITIONS FOR SUBSEQUENT INJURY FUND ELIGIBILITY; AMENDING SECTION 39-71-905, MCA; REPEALING SECTION 39-71-906, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as person with a disability — eligibility for benefits under fund. (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs.

(2) *If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund.*"

Section 2. Repealer. Section 39-71-906, MCA, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to workers' compensation claims filed on or after July 1, 2004.

Approved April 15, 2005

CHAPTER NO. 258

[SB 369]

AN ACT PROVIDING THAT A DEALER THAT SELLS NEW AND USED MOTOR VEHICLES OR RECREATIONAL VEHICLES MAY OBTAIN ADDITIONAL DEMONSTRATOR PLATES TO BE PLACED ON VEHICLES BEING MOVED TO OR FROM SERVICE AND REPAIR FACILITIES BEFORE SALE; AND AMENDING SECTION 61-4-129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate. Demonstrator plates must be issued for each vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) ~~New~~ *Except as provided in subsection (2)(c), new* and used motor vehicle or recreational vehicle demonstrator plates may be used on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving vehicles in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

~~(d)~~ A vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the vehicle.

(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 2. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall change all references to vehicle in subsection (2)(c) of 61-4-129 in [this act] to references to motor vehicle.

Approved April 15, 2005

CHAPTER NO. 259

[SB 370]

AN ACT PROVIDING FOR COUNTY DETENTION OFFICER MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-301, AND 19-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.

~~(2)~~(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership

service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

~~(3)~~(4) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

~~(4)~~(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 2. Section 19-7-301, MCA, is amended to read:

"19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) (a) *Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs' retirement system.*

(b) *A detention officer who was a member of the public employees' retirement system on [the effective date of this act] may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.*

~~(3)~~(4) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

~~(4)~~(5) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

~~(5)~~(6) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

~~(6)~~(7) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 3. Section 19-7-302, MCA, is amended to read:

"19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) *After [the effective date of this act], a detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention officers, except as provided in 19-7-301.*

~~(3)~~(4) This chapter may not be construed to deny any sheriff or investigator any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 260

[SB 373]

AN ACT GENERALLY REVISING LICENSING LAWS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; DEFINING "FINANCIAL STATEMENTS"; REQUIRING A \$100,000 SECURITY DEPOSIT IN CERTAIN CASES; PROVIDING THAT A SECURITY BOND, A LETTER OF CREDIT, OR MARKETABLE SECURITIES DEPOSITED WITH THE DEPARTMENT MAY BE USED TO PAY CERTAIN LIABILITIES; ALLOWING FOR AFFIDAVITS BY ASSURANCE ORGANIZATIONS TO VERIFY THAT FINANCIAL REQUIREMENTS ARE MET; PROVIDING FOR PROVISIONAL LICENSING; PROVIDING THAT A CLIENT IS NOT PRECLUDED FROM PROVIDING BENEFITS TO EMPLOYEES COEMPLOYED BY A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AMENDING SECTIONS 39-8-102, 39-8-202, 39-8-204, 39-8-206, 39-8-207, AND 39-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person that obtains all or part of ~~its~~ *the person's* workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) *"Financial statements" means accounting information, consisting of balance sheets and income statements, that identifies the financial position of applicants or licensees through their operations.*

~~(6)~~(7) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

~~(7)~~(8) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

~~(8)~~(9) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group;

(iii) arrangements existing for employment of an independent contractor, as defined in 39-71-120; and

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(9)~~(10) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

~~(10)~~(11) (a) "Professional employer organization" means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(11)~~(12) "Temporary service contractor" means a person conducting a business that hires ~~its~~ *the person's* own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Section 2. Section 39-8-202, MCA, is amended to read:

"39-8-202. Initial license application — application fee — standards — provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) \$750 for a resident or nonresident unrestricted license; and

(b) \$500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group ~~shall~~ *must* meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that ~~no~~ *a* written partnership agreement ~~exists~~ *does not exist*.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and ~~provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state. A domestic or foreign corporation must have filed any required documents with the secretary of state and must remain in good standing in order to conduct business pursuant to this chapter.~~

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and ~~provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state. A~~

domestic or foreign limited liability company must have filed any required documents with the secretary of state and must remain in good standing in order to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) (a) Except for an applicant who is granted a restricted license under subsection ~~(8)~~ (9), an applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:

(i) ~~providing a financial statement~~ *statements prepared that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant; or*

(ii) *providing independently compiled financial statements and a \$100,000 security deposit in a form that is acceptable to the department.*

(b) *If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapters 71 and 72, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.*

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

(ii) ~~A financial statement~~ *Financial statements* submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

(iii) ~~In meeting the specified~~ *If an applicant is unable to meet the \$50,000 net worth requirement, the applicant may shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapters 71 and 72, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.*

(7) The applicant shall maintain a positive working capital, as determined ~~in accordance with generally accepted accounting principles evidenced by financial statements.~~

(8) *The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.*

~~(8)~~(9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in ~~the that state of residence or domicile~~, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

~~(9)~~(10) An applicant for a ~~nonresident or~~ restricted license shall ~~file, on a form provided by the department, an appointment of~~ *appoint* a recognized and approved entity as its ~~attorney registered agent~~ to receive service of legal process issued against it in this state.

(11) *The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.*

~~(10)~~(12) A license issued under 39-8-204 or this section ~~remains the property of the department and~~ may not be transferred."

Section 3. Section 39-8-204, MCA, is amended to read:

“39-8-204. License renewal. (1) ~~Except as provided in subsection (5), a~~ A license issued under this chapter is valid for 1 year from the date of issuance unless suspended or revoked.

(2) *An applicant for license renewal is subject to the requirements of 39-8-202(3) through (11).*

~~(2)~~(3) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in 39-8-205.

~~(3)~~(4) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.

~~(4)~~(5) Denial of a renewal license is subject to review under the provisions of 39-8-203.

~~(5) If the application fee required in 39-8-202 is paid and accepted, then no additional license fee is required for the first year.”~~

Section 4. Section 39-8-206, MCA, is amended to read:

“39-8-206. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under this chapter if, after notice to the licensee ~~of the charges and after a hearing,~~ the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of this chapter;

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of this chapter.

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;

(ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(iii) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in 39-8-203.”

Section 5. Section 39-8-207, MCA, is amended to read:

“39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is ~~the~~ *an* employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. *This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.*

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

- (d) the policy limits on each insurance policy; and
- (e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, (29 U.S.C. 1001, et seq.), as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

- (a) the client employer's corporate or business name;
- (b) the client employer's taxpayer or employer identification number;
- (c) the client employer's risk identification number;
- (d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and
- (e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

- (a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless

done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.”

Section 6. Section 39-8-302, MCA, is amended to read:

“39-8-302. Disciplinary action against licensee — penalties. (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers’ compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of ~~unemployment insurance~~ *any payroll-related taxes* or workers’ compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers’ compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to this chapter; or

(f) violates the provisions of this chapter or a rule issued pursuant to this chapter.

(2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000, imprisonment for not more than 1 year, or both.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 261

[SB 410]

AN ACT EXPANDING THE POWER OF CITIES AND TOWNS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS UNDER PLANS APPROVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING

SECTIONS 7-3-1105, 7-3-1222, 7-31-4110, AND 87-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-1105, MCA, is amended to read:

“7-3-1105. Rules, ordinances, and resolutions of consolidated unit.

(1) Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation ~~shall~~ *must* remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the defined boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.”*

Section 2. Section 7-3-1222, MCA, is amended to read:

“7-3-1222. Procedure to enact ordinances and resolutions. (1)

Ordinances and resolutions must be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, must be confined to one subject, which must be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations must be confined to the subject of appropriations. An ordinance may not be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading must be in full unless a written or printed copy of the measure has been furnished to each member of the commission prior to final reading.

(2) The enacting clause of all ordinances passed by the commission must be: “Be it ordained by the city and county of _____”, and the enacting clause of all ordinances submitted by the initiative must be: “Be it ordained by the people of the city and county of _____”.

(3) An ordinance, resolution, or section of an ordinance or resolution may not be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section of the ordinance or resolution as revised or amended.

(4) Every ordinance or resolution, upon its final passage, must be recorded in a book kept for that purpose and must be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution must be published at least once in the manner that the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors must be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.*

Section 3. Section 7-31-4110, MCA, is amended to read:

“7-31-4110. Restriction of wildlife. (1) A city or town may adopt a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

(2) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.*

Section 4. Section 87-3-305, MCA, is amended to read:

“87-3-305. Unlawful to hunt deer within city or town boundaries. It is unlawful to hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state *except as allowed under a plan developed by a city or town and approved by the department pursuant to 7-3-1105, 7-3-1222, or 7-31-4110.*”

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 262

[SB 451]

AN ACT REVISING SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS LICENSING LAWS; REVISING THE DEFINITION OF “PRACTICE OF AUDIOLOGY” AND “PRACTICE OF SPEECH-LANGUAGE PATHOLOGY”; REVISING LICENSE EXEMPTION AND EXAMINATION REQUIREMENTS; AND AMENDING SECTIONS 37-15-101, 37-15-102, 37-15-103, 37-15-303, 37-15-304, 37-15-307, AND 37-15-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-101, MCA, is amended to read:

“37-15-101. Purpose. The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified

speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative disabilities *disorders*, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.”

Section 2. Section 37-15-102, MCA, is amended to read:

“37-15-102. Definitions. As used in this chapter, the following definitions apply:

~~(1) “ASHA” means the American speech-language-hearing association.~~

~~(2) (1) “Association” means the Montana speech-language and hearing association.~~

~~(3)(2) “Audiologist” means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “audiologist”, “audiology”, “audiometrist”, “audiometry”, “audiological”, “audiometrics”, “hearing clinician”, “hearing clinic”, “hearing therapist”, “hearing therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.~~

~~(4)(3) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.~~

~~(5)(4) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.~~

~~(6)(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.~~

~~(7)(6) “Practice of audiology” means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule. These services include:~~

~~(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;~~

~~(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;~~

~~(c) fabricating ear molds;~~

~~(d) providing auditory training and speech reading;~~

~~(e) conducting tests of vestibular function;~~

~~(f) evaluating tinnitus;~~

~~(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and~~

~~(h) speech or language screening, limited to a pass/fail determination.~~

~~(8)(7) “Practice of speech-language pathology” means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders~~

nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule. These services include:

- ~~(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;~~
- ~~(b) determining the need for augmentative communication systems and providing training in the use of these systems;~~
- ~~(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;~~
- ~~(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;~~
- ~~(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;~~
- ~~(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;~~
- ~~(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and~~
- ~~(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.~~

~~(9)(8)~~ "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

~~(10)(9)~~ "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist."

Section 3. Section 37-15-103, MCA, is amended to read:

"37-15-103. Exemptions. (1) ~~Nothing in this~~ *This chapter prevents does not prevent* a person licensed in this state under any other law from engaging in the profession or business for which ~~he that person~~ *is licensed*.

(2) ~~Nothing in this chapter restricts or prevents~~ *This chapter does not restrict or prevent* activities of a speech-language pathology or audiology nature or the use of the official title of the position for which ~~they the activities~~ *were employed performed* on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) ~~of this section who are not licensed under this chapter must do so solely~~ *may perform*

those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) ~~Nothing in this chapter restricts~~ *This chapter does not restrict the* activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of ~~his a~~ supervised course of study, and a fee may not accrue directly or indirectly to the student. These ~~persons~~ *students* must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to ~~his the~~ level of training.

(5) ~~Nothing in this~~ *This chapter restricts does not restrict* a person from another state from offering speech-language pathology or audiology services in this state if ~~these the~~ services are performed for ~~no not~~ more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations ~~as that~~ the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter ~~or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent~~ may offer speech-language pathology or audiology services in this state for ~~no not~~ more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) ~~Nothing in this~~ *This chapter restricts does not restrict any* a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which ~~he the person~~ qualifies.

(7) ~~Nothing in this~~ *This chapter restricts does not restrict a any* person who holds a certificate of registration in this state as a hearing aid dealer from performing ~~those the~~ functions for which ~~he the person~~ qualifies and that are described in Title 37, chapter 16.

(8) ~~Nothing in this~~ *This chapter exempts does not exempt* an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16."

Section 4. Section 37-15-303, MCA, is amended to read:

"37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant ~~must~~:

(a) *must* meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements ~~of the ASHA as defined by board rule;~~

(b) *shall* pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

(3) *The standards defined by the board must be equal to or greater than the standards generally accepted as the national norm.*

Section 5. Section 37-15-304, MCA, is amended to read:

“37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant ~~shall~~ *must* be examined for speech-language pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under ~~such~~ *the* supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance ~~shall~~ *must* be determined by the board.

(3) The board may waive the written examination for ~~certification~~ *licensure* if the applicant has successfully passed ~~the~~ *a* national examination in speech-language pathology or audiology *as provided by board rule*.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech-language pathology or audiology ~~as it~~ *that the board* considers appropriate. ~~It~~ *The board* may also examine the candidate with regard to ~~his~~ professional skills and ~~his~~ judgment in the ~~utilization~~ *use* of speech-language pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations ~~shall~~ *must* be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails ~~his~~ *the* examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.”

Section 6. Section 37-15-307, MCA, is amended to read:

“37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or *assistant* or audiology aide or *assistant* ~~shall~~ *must* be determined by the board each year based on costs and predicted expenditures.”

Section 7. Section 37-15-313, MCA, is amended to read:

“37-15-313. Registration of aides or assistants. Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with ~~a~~ *the* board on forms provided by the board all speech-language pathology aides or *assistants* and audiology aides or *assistants* working directly under the supervision of the licensee.”

Approved April 15, 2005

CHAPTER NO. 263

[SB 457]

AN ACT REVISING THE TIME PERIOD FOR AN INSURER TO GIVE NOTICE OF PREMIUM DUE; CLARIFYING NOTICE REQUIREMENTS FOR CANCELLATION OF INSURANCE POLICIES ON HOMES FOR NONPAYMENT; AND AMENDING SECTIONS 33-15-1103, 33-15-1105, AND 33-23-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-1103, MCA, is amended to read:

“33-15-1103. Midterm cancellation. (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or
- (c) on grounds stated in the policy which pertain to the following:
 - (i) material misrepresentation;
 - (ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;
 - (iii) substantial breaches of contractual duties, conditions, or warranties;
 - (iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;
 - (v) financial impairment of the insurer; or
 - (vi) any other reason approved by the commissioner.

(2) ~~Cancellation~~ *Except as provided in 33-23-401, cancellation* under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.

(3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. ~~No~~ A cancellation under this subsection is *not* effective until 10 days after the notice is delivered or mailed to the insured.

(4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or
- (c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).”

Section 2. Section 33-15-1105, MCA, is amended to read:

“33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a

notice of the intention not to renew. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification ~~or~~ of nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than ~~40~~ 30 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal."

Section 3. Section 33-23-401, MCA, is amended to read:

"33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) An insurer may not cancel or refuse to renew any policy insuring private residences, including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile, without first giving to the insured 45 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy, *except that a policy may be canceled for nonpayment of premiums, in which case, the notice to the insured may not be less than 20 days.*

(2) Violation of this section is punishable under 33-1-104."

Approved April 15, 2005

CHAPTER NO. 264

[SB 460]

AN ACT ALLOWING THE TRUSTEES OF A UNIFIED SCHOOL DISTRICT OR A JOINT BOARD OF TRUSTEES TO CONDUCT MORE THAN ONE MAIL BALLOT SCHOOL BOND ELECTION ON THE SAME DAY; AMENDING SECTION 13-19-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-19-104, MCA, is amended to read:

"13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts. (1) Conducting elections by mail ballot is only one option available to local officials, and this chapter does not mandate that the procedure be used.

(2) Except as provided in subsection (3), any election may be conducted by mail ballot.

(3) The following elections may not be conducted by mail ballot:

- (a) a regularly scheduled federal, state, or county election;
- (b) a special federal or state election, unless authorized by the legislature; or
- (c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

(4) ~~(a)~~ *Except as provided in subsection (4)(b), if more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections.*

(b) The requirement that a county election administrator shall conduct more than one mail ballot election on the same day does not apply to a mail ballot school bond election conducted by the trustees of any two or more school districts that have unified pursuant to 20-6-312 or that have created a joint board of trustees pursuant to 20-3-361."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 265

[SB 478]

AN ACT PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-303, MCA, is amended to read:

"2-4-303. Emergency or temporary rules. (1) (a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of

the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) *An emergency rule may not be used to implement an administrative budget reduction.*

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.”

Section 2. Section 2-4-405, MCA, is amended to read:

“2-4-405. Economic impact statement. (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, *including but not limited to providers of services under contracts with the state*, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 266

[SB 479]

AN ACT SPECIFYING THE ENTITIES TO WHICH A BILL OR DEMAND FOR PAYMENT FOR ANATOMIC PATHOLOGY SERVICES MAY BE PRESENTED; PROHIBITING A PHYSICIAN OR OTHER PRACTITIONER OF THE HEALING ARTS FROM BILLING FOR ANATOMIC PATHOLOGY SERVICES UNLESS THOSE SERVICES WERE PROVIDED BY THE PHYSICIAN OR OTHER PRACTITIONER; SPECIFYING ENTITIES NOT REQUIRED TO REIMBURSE FOR CERTAIN ANATOMIC PATHOLOGY SERVICES; PROVIDING EXEMPTIONS; PROVIDING A REMEDY FOR VIOLATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Direct billing for anatomic pathology services. (1) A clinical laboratory or physician providing anatomic pathology services for a patient may present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;

(d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or

(e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

(a) a patient;

(b) an insurer;

(c) a health care facility; or

(d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological,

biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [section 1].

Section 3. Applicability. [This act] applies to anatomic pathology services furnished after October 1, 2005.

Approved April 15, 2005

CHAPTER NO. 267

[SB 497]

AN ACT LIMITING THE TRANSFERABILITY OF THE LOCATION OF RETAIL BEER LICENSES AND ALL-BEVERAGES LIQUOR LICENSES THAT ARE BROUGHT TO WITHIN 5 MILES OF A CITY OR TOWN BECAUSE OF ANNEXATION; AMENDING SECTIONS 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department

before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after [the effective date of this act] may not be transferred to another location within the city quota area for 5 years from the date of the annexation."

Section 2. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, (an all-beverages license), in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell ~~such~~ alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of ~~such~~ those cities and towns ~~shall must~~ be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of ~~such~~ the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such~~ the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits ~~thereof of the cities~~, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in ~~such~~ cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof of the cities or towns, shall govern~~ governs the number of retail licenses that may be issued for use within ~~such~~ the cities and towns and within a distance of 5 miles from the corporate limits ~~thereof of the cities or towns~~. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of ~~such~~ the municipalities and within a distance of 5 miles from their respective corporate limits ~~shall must~~ be determined on the basis of the combined populations of both of ~~such~~ the municipalities and may not exceed the ~~foregoing~~ limitations in subsection (1) or this subsection. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town ~~shall must~~ be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, which are in excess of the ~~foregoing~~ limitations ~~shall in subsections (1) and (2) must~~ be renewable, but no new licenses may not be issued in violation of ~~such~~ the limitations.

(4) ~~Such~~ The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if ~~such~~ the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits ~~thereof of a city or town~~ may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in ~~such~~ the county.

(6) *An all-beverages license issued under subsection (5) that becomes located within 5 miles of an incorporated city or town because of annexation after [the effective date of this act] may not be transferred to another location within the city quota area for 5 years from the date of annexation.*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 268

[HB 643]

AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating

smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-220, MCA, is amended to read:

"20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours.~~

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) ~~as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;~~

(c) ~~after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

(d) ~~by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.~~

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) *A violation of this section is subject to the penalties provided in [section 8].*

(4)(5) For the purposes of this section, the following definitions apply:

(a) "Public school building or *public school* property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 2. Section 50-40-102, MCA, is amended to read:

"50-40-102. Intent — purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke. The legislature finds and declares that the purposes of this part are as follows:~~

(1) *to protect the public health and welfare by prohibiting smoking in public places and places of employment;*

(2) *to recognize the right of nonsmokers to breathe smoke-free air; and*

(3) *to recognize that the need to breathe smoke-free air has priority over the desire to smoke."*

Section 3. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) *"Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.*

(4)(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)(3)~~ "Enclosed public place" means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~serving~~ that serves as a place of work, including but not limited to the following:

(a) restaurants,;

(b) stores,;

(c) *public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;*

(d) *trains, buses, and other forms of public transportation; educational or*

(e) *health care facilities,;*

(f) *auditoriums, arenas, and assembly facilities; and*

- (g) meeting rooms open to the public;
- (h) bars;
- (i) community college facilities;
- (j) facilities of the Montana university system; and
- (k) public schools, as provided for in 20-1-220 and 50-40-104.

~~(3)~~(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

~~(4)~~(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5)(7) "Place of work" means an enclosed room where ~~more than one employee or more individuals work~~.

(6)(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted."

Section 4. Section 50-40-104, MCA, is amended to read:

~~"50-40-104. Designation or reservation of smoking or nonsmoking areas—notice Smoking in enclosed public places prohibited—notice to public—places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.~~

~~(1) The proprietor or manager of an enclosed public place shall:~~

- ~~(a) designate nonsmoking areas with easily readable signs;~~
- ~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~
- ~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~
- ~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers that smoking in the enclosed public place is prohibited.~~

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) ~~The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.~~

(5) ~~The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:~~

(a) *until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;*

(b) *a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:*

(i) *a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;*

(ii) *an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or*

(iii) *a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;*

(c) *a private motor vehicle;*

(d) *a school property in which smoking is allowed pursuant to the exception in 20-1-220;*

(e) *a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and*

(f) *a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."*

Section 5. Section 50-40-108, MCA, is amended to read:

"50-40-108. Enforcement. The provisions of this part ~~shall~~ *must* be supervised and enforced by the ~~department and the department's designees,~~ local boards of health, ~~and the boards' designees~~ under the direction of the department."

Section 6. Section 50-40-201, MCA, is amended to read:

"50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings — smoking prohibited. (1) ~~In offices and work areas in all parts of buildings maintained by a political subdivision, except a school or community college facility designated as tobacco free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free smoking is prohibited as provided in this section.~~

(2) *Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.*

(3) ~~Restrictions authorized by contained in~~ *Restrictions contained in* this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

Section 7. Part preemptive of stricter ordinance. The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

Section 8. Penalties. (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
 - (i) \$100 for a third violation;
 - (ii) \$200 for a fourth violation; and
 - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

Section 9. Rulemaking required. The department shall adopt rules to implement this part.

Section 10. Repealer. Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 12. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 through 9].

Section 13. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 14. Termination. [Section 7] terminates September 30, 2009.

Approved April 18, 2005

CHAPTER NO. 269

[SB 191]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE NAME OF THE STATE AUDITOR BE CHANGED TO THE INSURANCE COMMISSIONER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IV, section 8, of The Constitution of the State of Montana is amended to read:

“Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate’s nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, ~~state auditor~~ *insurance commissioner*, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.”

Section 2. Article VI, section 1, of The Constitution of the State of Montana is amended to read:

“Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner*.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.”

Section 3. Article VI, section 2, of The Constitution of the State of Montana is amended to read:

“Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner* shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.”

Section 4. Article VI, section 3, of The Constitution of the State of Montana is amended to read:

“Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or ~~auditor~~ *insurance commissioner* unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.”

Section 5. Article VI, section 4, of The Constitution of the State of Montana is amended to read:

“Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the ~~auditor~~ *insurance commissioner* shall have such duties as are provided by law.”

Section 6. Article VI, section 6, of The Constitution of the State of Montana is amended to read:

“Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, ~~auditor~~ *insurance commissioner*, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.”

Section 7. Article VI, section 7, of The Constitution of the State of Montana is amended to read:

“Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state,

attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner*) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.”

Section 8. Article X, section 4, of The Constitution of the State of Montana is amended to read:

“Section 4. Board of land commissioners. The governor, superintendent of public instruction, ~~auditor~~ *insurance commissioner*, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.”

Section 9. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2006 by printing on the ballot the full title of this act and the following:

- ☐ FOR changing the name of the state auditor to the insurance commissioner.
- ☐ AGAINST changing the name of the state auditor to the insurance commissioner.

CHAPTER NO. 270

[HB 68]

AN ACT PROHIBITING THE ADMINISTRATION OF ANY MEDICINE TO A CHILD IN A LICENSED OR UNLICENSED DAY-CARE FACILITY WITHOUT PROPER AUTHORIZATION FROM THE CHILD'S PARENT OR GUARDIAN; PROVIDING AN EXCEPTION; PROVIDING DEFINITIONS; AND PROVIDING A CRIMINAL PENALTY.

WHEREAS, too often the victim is forgotten by the judicial system and society; and

WHEREAS, the motivation for this bill is the tragic death of Dane Jordan Heggem; and

WHEREAS, this bill will be known as “Dane’s Law” to remind the judicial system and society of the victims of the crime.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition against administering medicine without authorization — provision for emergency — definitions — penalty. (1) An employee, owner, household member, volunteer, or operator of a day-care facility, as defined in 52-2-703, regardless of whether the facility is licensed or registered, may not purposely or knowingly administer any medicine, as defined in 37-7-101, to a child attending the day-care facility without written authorization. Written authorization must include the child’s name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child’s parent or guardian.

(2) If an emergency medical condition arises and the parent or guardian of the child is unavailable, an employee, owner, or operator of a day-care facility may administer medicine to a child attending the day-care facility without the written authorization of a parent or guardian as provided in subsection (1) if:

(a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical practitioner's signature; or

(b) a medical practitioner, emergency services provider, or 9-1-1 responder verbally directs the employee, owner, or operator of the day-care facility attending the child to immediately administer a medicine to the child and the child is subsequently transported within a reasonable time by the child's parents, an owner, operator, or employee of the child-care facility, a health care provider, or an emergency services provider to a health care facility or a medical practitioner for follow-up care.

(3) A medicine administered to a child pursuant to subsection (1) or (2) may not be inappropriately administered.

(4) An employee, owner, or operator of a day-care facility who has administered medicine to a child in accordance with this section may not be prosecuted for causing bodily injury or severe bodily injury to a child.

(5) For the purposes of this section:

(a) "bodily injury" has the meaning provided in 45-2-101;

(b) "emergency medical condition" means circumstances in which a prudent lay person acting reasonably would believe that an emergency medical condition exists;

(c) "emergency services provider" has the meaning provided in 50-16-701;

(d) "health care facility" means a profit or nonprofit, public or private physician's office, hospital, critical access hospital, infirmary, clinic, outpatient center for primary care, outpatient center for surgical services, or medical assistance facility, as any of those terms are defined in 50-5-101;

(e) "inappropriately administered" means to give medicine to a child that is not indicated, as to the medicine's type, dosage, or frequency of use or the container instructions, if any, by the medical symptoms exhibited by the child;

(f) "knowingly" has the meaning provided in 45-2-101;

(g) "medical practitioner" has the meaning provided in 37-2-101;

(h) "9-1-1 responder" means a law enforcement dispatcher or other person answering a 9-1-1 telephone call, a person answering a telephone call made to a poison control center, or an emergency services provider;

(i) "purposely" has the meaning provided in 45-2-101; and

(j) "serious bodily injury" has the meaning provided in 45-2-101.

(4) (a) A person convicted of purposely or knowingly administering medicine without authorization resulting in bodily injury to a child shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both.

(b) A person convicted of purposely or knowingly administering medicine without authorization resulting in serious bodily injury to a child or in the death of a child shall be imprisoned for a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 1].

Approved April 19, 2005

CHAPTER NO. 271

[HB 105]

AN ACT PROVIDING FOR PARTIAL PAYMENT OF THE SALARY OF A DEPUTY SHERIFF INJURED IN THE PERFORMANCE OF THE DEPUTY SHERIFF'S DUTY; PROVIDING FOR ASSIGNMENT TO LIGHT DUTY OR ANOTHER DEPARTMENT OR AGENCY; PROVIDING THAT THE DEPUTY SHERIFF AND EMPLOYER RETIREMENT CONTRIBUTIONS MUST BE BASED ON TOTAL COMPENSATION; AND REPEALING SECTION 19-7-810, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of partial salary of deputy sheriff injured in performance of duty. (1) A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires medical or other remedial treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the deputy sheriff must be unable to perform the deputy sheriff's duties as a result of the injury.

Section 2. Assignment to light duty or other agency. (1) Whenever, in the opinion of the county and supported by a health care provider's opinion, the deputy sheriff is able to perform specified types of light duty, payment of the officer's partial salary amount under [section 1] must be discontinued if the deputy sheriff refuses to perform light duty when it is available and offered to the deputy sheriff.

(2) The deputy sheriff may be transferred to another department or agency within the county.

Section 3. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and the workers' compensation program under the provisions of [section 1], the member's compensation reported by the employer is the same as if the member was in active service, and the member and employer contributions required by this chapter must be calculated and paid on that total compensation.

Section 4. Repealer. Section 19-7-810, MCA, is repealed.

Section 5. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 32, part 21, and the provisions of Title 7, chapter 32, part 21, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 19, chapter 7, part 4, and the provisions of Title 19, chapter 7, part 4, apply to [section 3].

Approved April 19, 2005

CHAPTER NO. 272

[HB 140]

AN ACT CREATING A MONTANA CONSUMER DEBT MANAGEMENT SERVICES ACT; REQUIRING LICENSURE OF CREDIT COUNSELING SERVICES; ESTABLISHING REQUIREMENTS FOR DEBT MANAGEMENT PLANS ENTERED INTO BETWEEN CONSUMERS AND CREDIT COUNSELING SERVICES; DESIGNATING PROHIBITED PRACTICES FOR CREDIT COUNSELING SERVICES; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH RULEMAKING AUTHORITY; PROVIDING REMEDIES AND PENALTIES; REPEALING CERTAIN DEBT ADJUSTMENT LAWS; AMENDING SECTION 5, CHAPTER 125, LAWS OF 2005; REPEALING SECTIONS 31-3-201, 31-3-202, AND 31-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the “Montana Consumer Debt Management Services Act”.

Section 2. Scope. (1) The provisions of [sections 1 through 7] apply to any person that provides or offers to provide debt management plans to residents of this state.

(2) The provisions of [sections 1 through 7] do not apply to:

(a) banking institutions, as defined in 32-1-601, building and loan associations, credit unions, escrow businesses, as defined in 32-7-102, or title companies;

(b) the services of an attorney licensed to practice law in this state if providing credit counseling services is incidental to and not the principal business of the attorney;

(c) the services of a certified public accountant licensed to practice accounting in this state if providing credit counseling services is incidental to and not the principal business of the certified public accountant; and

(d) debt collectors that do not advertise or hold themselves out as a credit counseling service.

Section 3. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) “Consumer” means an individual who, singly or jointly with another individual, owes money to one or more creditors for personal, family, or household purposes.

(2) “Credit counseling service” means a person that provides or offers to provide debt management plan services to consumers for consideration.

(3) “Credit counselor” means a person who is an employee or agent of a credit counseling service and who designs debt management plans and provides consumers with budget, basic financial planning, and consumer education services.

(4) "Debt management plan" means a written agreement under which a credit counseling service is to receive money from a consumer for the purpose of distributing that money to one or more creditors of the consumer as full or partial payment of the consumer's obligation to the creditor or creditors.

(5) "Department" means the department of administration provided for in 2-15-1001.

(6) "Person" means an individual, sole proprietorship, firm, partnership, corporation, limited liability partnership or company, or other entity and includes a nonprofit organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(7) "Trust account" means an account:

(a) established by a credit counseling service in a federally insured financial institution;

(b) designated as a trust account or other appropriate designation indicating that the funds in the account are not funds of the credit counseling service or its directors, officers, employees, or agents;

(c) used exclusively for funds paid by consumers to the credit counseling service for disbursement to creditors of the consumers; and

(d) that is unavailable to creditors of the credit counseling service.

Section 4. Requirements for licensure — fees — rulemaking authority — refusal to grant license — suspension or revocation of license — rules. (1) A credit counseling service may not provide or offer to provide debt management plans or other consumer credit counseling services to the consumers of this state without first being licensed by the department.

(2) In order to obtain a license or annually renew a license, an applicant shall pay the required license fee as established by the department by rule. The fee must be in an amount commensurate with the cost of administering [sections 1 through 7], and the applicant shall provide evidence:

(a) that it maintains a trust account for handling consumer funds;

(b) (i) that it has been accredited by a bona fide third-party accreditation provider that ensures compliance with industry standards and best practices; and

(ii) that its credit counselors have been certified by a bona fide third-party certification provider as possessing the competence to provide consumer credit counseling services;

(c) that a majority of its owners, principals, officers, board of directors, or employees are not persons who have a conflict of interest with the applicant's mission. Persons with a conflict of interest include creditors, creditors' representatives, bankruptcy attorneys, and other persons having a direct stake in the outcome of the consumer credit counseling process.

(d) that it has obtained a surety bond for the benefit of consumers harmed by a violation of the provisions of [sections 1 through 7] in an amount, form, and duration as required by the department by rule, except that an applicant that does not maintain an office in this state with a credit counselor on the premises shall post a surety bond in the amount of \$50,000; and

(e) that it has contracted at its own expense for annual audits by an independent certified public accountant to be conducted within 6 months of the close of each of its fiscal years.

(3) An applicant for a license or license renewal shall provide any additional information that the department requires. The department shall adopt rules to implement the provisions of this section. The department shall designate by rule acceptable third-party accreditation and certification providers for purposes of subsection (2)(b).

(4) The department may refuse to grant a license to or suspend or revoke the license of any credit counseling service that fails to comply with the provisions of subsections (1) through (3) or any rules adopted pursuant to this section.

Section 5. Requirements for debt management plans — rulemaking authority. (1) A credit counseling service may not require or accept any consideration from a consumer for the provision of services or the offer to provide services unless a written and dated debt management plan meeting the requirements of this section has been signed by the consumer. A copy of the debt management plan must be provided to the consumer.

(2) The debt management plan must include the following:

(a) the name and principal business address of the credit counseling service and the name and address of the consumer;

(b) a full and detailed description of the services to be performed by the credit counseling service for the consumer;

(c) a clear statement of the costs to the consumer, including contributions or fees, highlighted in bold type;

(d) a statement, in a prominent location in the plan in at least 10-point bold type, that either party may cancel the agreement without penalty at any time upon 10 days' notice and that a consumer who cancels an agreement is entitled to a refund of all unexpended funds that the consumer has paid to the credit counseling service as of the date of the notice;

(e) a complete list of the obligations of each party that are subject to the terms of the agreement;

(f) an indication of how disputes are to be resolved; and

(g) a statement that the credit counseling service has a duty to advocate the interests of the consumer who is a party to the debt management plan and not promote the interests of any third party that is in conflict with the primary obligation of advocating the interests of the consumer.

(3) A credit counseling service shall provide each consumer who is a party to a debt management plan with a report that shows the funds received from the consumer since the last report and the disbursement of those funds made to each creditor of the consumer. The credit counseling service shall provide the reports to consumers on at least a quarterly basis.

(4) (a) A credit counseling service may not impose any fees or other charges on a consumer or receive any payment from a consumer or other person on behalf of a consumer except as allowed by this section.

(b) The fees or charges referred to in this subsection (4) include voluntary contributions and any other fees charged to or collected from a consumer or on behalf of a consumer.

(c) A credit counseling service may not charge an initial consultation fee that exceeds an amount set by the department by rule. The fee or portion of the fee may not be charged until the credit counseling service has complied with the provisions of this section.

(d) A credit counseling service may charge a monthly maintenance fee. In the absence of exceptional circumstances as defined in the department's rules, a credit counseling service may not have a total monthly fee in an amount that exceeds the amount set by the rules.

(e) A credit counseling service may not, as a condition of entering into a debt management plan, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies.

(f) Fees charged for services other than credit counseling services must be fair and reasonable.

(g) If the credit counseling service imposes any fee or other charge or receives any funds or other payments not authorized by this section, except as a result of a bona fide error, the debt management plan is void and the credit counseling service shall return to the consumer all fees received from or on behalf of the consumer.

(5) Credit counseling services are prohibited from using hold harmless clauses, confessions of judgment, and waivers of the right to jury trials in debt management plans.

(6) The department may promulgate rules as necessary to implement the provisions of [sections 1 through 7], including setting fees.

Section 6. Prohibited practices. (1) A credit counseling service may not:

- (a) purchase any debt or obligation of a consumer;
- (b) lend money or provide credit to a consumer;
- (c) obtain a mortgage or other security interest in any property of a consumer;
- (d) operate as a collection agency;
- (e) structure a debt management plan in a way that at the debt management plan's conclusion any debts of the consumer that are subject to the debt management plan are not fully amortized;
- (f) charge for or provide credit insurance;
- (g) cause or attempt to cause a consumer to waive or forego any right or benefit that the consumer has under the provisions of [sections 1 through 7]; or
- (h) operate in this state without a license.

(2) (a) A credit counseling service may not advertise its services in any manner in this state without first being licensed by the department.

(b) A credit counseling service or any person on a credit counseling service's behalf may not misrepresent any material fact or make a false promise intended to induce a consumer into entering a debt management plan.

Section 7. Remedies — penalty. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 7] apply.

(2) Any violation of [sections 1 through 7] constitutes an unfair or deceptive trade practice and is a violation of 30-14-103.

(3) A person found to have violated [sections 1 through 7] is liable to the person harmed for actual and consequential damages or \$500, whichever is greater, for each violation, plus costs and attorney fees.

(4) A person harmed by a violation of [sections 1 through 7] may sue for injunctive and other appropriate equitable relief.

(5) A person harmed by a violation of [sections 1 through 7] may bring a class action suit.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of [sections 1 through 7].

(7) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of [sections 1 through 7], may seek any remedy provided by Title 30, chapter 14, part 1.

(8) A person engaged in credit counseling in this state without a license, a person who fails to maintain a separate trust account for consumer funds, or a person who fails to maintain any records required by the provisions of [sections 1 through 7] or by department rule shall be fined an amount not to exceed \$5,000 for each violation.

Section 8. Section 5, Chapter 125, Laws of 2005, is amended to read:

“Section 5. Retroactive applicability — applicability. (1) *Except as provided in subsection (2), [This this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.*

(2) *[This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of this act].”*

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Repealer. Sections 31-3-201, 31-3-202, and 31-3-203, MCA, are repealed.

Section 11. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 7].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 273

[HB 167]

AN ACT INCREASING THE FREQUENCY AT WHICH THE SECRETARY OF STATE IS REQUIRED TO PROVIDE A LIST OF CERTAIN CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND LIMITED LIABILITY PARTNERSHIPS TO THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 15-31-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-603, MCA, is amended to read:

“15-31-603. List of entities furnished by secretary of state. On or before ~~December 31~~ *the 15th day of each year month*, the secretary of state shall ~~direct~~ *provide* a list of all *new* corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic,

subject to the terms of Title 35, chapters 1, 4, 5, 8, ~~9~~, *through* 10, and 12, to the department of revenue. The list must include the following information:

- (1) the name of the entity;
- (2) the principal office of the entity;
- (3) the name and address of the registered agent of the entity in Montana, if applicable; and
- (4) other information that the director of the department of revenue may require.”

Approved April 19, 2005

CHAPTER NO. 274

[HB 244]

AN ACT DESIGNATING TERRY, MONTANA, AS THE OFFICIAL HOME OF THE EVELYN CAMERON GALLERY AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS AND HIGHWAY SIGNS AND TO AMEND HIGHWAY SIGNS IN THE VICINITY OF TERRY TO REFLECT THE DESIGNATION.

WHEREAS, the photography and writing of Evelyn Cameron captured the spirit and history of early Montana in her more than 1,800 photographs and 35 volumes of diaries; and

WHEREAS, Cameron rejected an aristocratic lifestyle offered by her upbringing in favor of the work of ranching in early Prairie County; and

WHEREAS, from 1892 until her death in 1928, Cameron spent her life living, working, and photographing Eastern Montana while living in the Terry area; and

WHEREAS, Cameron’s exceptional images of the rugged and austere Montana landscape and early lifestyle preserve a cherished history of frontier life on the prairie, garnering national attention; and

WHEREAS, the town of Terry, Montana, maintains the only permanent exhibit of Cameron’s photographs and personal effects in the Evelyn Cameron Gallery.

THEREFORE, be it enacted by the Legislature of the State of Montana that the town of Terry, Montana, be designated the “Official Home of the Evelyn Cameron Gallery”.

Be it enacted by the Legislature of the State of Montana:

Section 1. Official home of Evelyn Cameron gallery — Terry. (1) The town of Terry is designated the “official home of the Evelyn Cameron gallery”.

(2) The department of commerce and the department of transportation shall identify the town of Terry as the official home of the Evelyn Cameron gallery on official state maps.

(3) The department of transportation shall erect and maintain signs designating the town of Terry as the official home of the Evelyn Cameron gallery along highways in the vicinity of Terry and shall accomplish the signing changes in accordance with the department’s normal sign maintenance and replacement schedule.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved April 19, 2005

CHAPTER NO. 275

[HB 297]

AN ACT PROVIDING THAT PAPER BALLOTS MUST BE USED IN ANY ELECTION SO THAT VOTES MAY BE MANUALLY COUNTED; PROVIDING AN EXCEPTION ONLY TO FACILITATE VOTING BY DISABLED VOTERS; AND AMENDING SECTION 13-17-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-17-103, MCA, is amended to read:

“13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

- (a) allows an elector to vote in secrecy;
- (b) prevents an elector from voting for any candidate or on any ballot issue more than once;
- (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;
- (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;
- (e) allows an elector to vote a split ticket in a general election if the elector desires;
- (f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection ~~(2)~~ (3);
- (g) may be protected from tampering for a fraudulent purpose;
- (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
- (i) allows write-in voting; ~~and~~
- (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system; *and*
- (k) *uses a paper ballot that allows votes to be manually counted, except as provided in subsection (2).*

(2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if:

- (a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or*
- (ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to 13-17-101; and*
- (b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.*

~~(2)~~(3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.”

Section 2. Coordination instruction. If Senate Bill No. 302 and [this act] are both passed and approved and if Senate Bill No. 302 amends 13-17-103 to add a subsection (1)(k) allowing the use of a direct recording electronic voting system, then subsection (1)(k) of Senate Bill No. 302 is void.

Approved April 18, 2005

CHAPTER NO. 276

[HB 307]

AN ACT CREATING THE OFFENSE OF MONEY LAUNDERING; PROVIDING FOR THE FORFEITURE AND SALE OF PROPERTY USED IN THE COMMISSION OF THE OFFENSE; AND PROVIDING FOR SALE PROCEEDS TO BE DEPOSITED IN THE STATE GENERAL FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Money laundering. (1) A person commits the offense of money laundering if the person knowingly:

(a) receives or acquires the proceeds of, or engages in transactions involving proceeds of, any activity that is unlawful under the laws of the United States or the state in which the activity occurred;

(b) gives, sells, transfers, trades, invests, conceals, transports, or otherwise makes available anything of value that the person knows is intended to be used for the purpose of committing or furthering the commission of any activity that is unlawful under the laws of the United States or the state in which the committing or furthering of the commission of the activity occurs;

(c) directs, plans, organizes, initiates, finances, manages, supervises, or facilitates the transportation or transfer of proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred; or

(d) conducts a financial transaction involving proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds or to avoid a transaction reporting requirement under federal law.

(2) A person convicted of money laundering shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the money laundering is part of a common scheme or if the value of the proceeds or item of value exceeds \$1,000, the person shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 20 years, or both.

(3) (a) Upon conviction, the court shall order the following property possessed by a person convicted of money laundering to be forfeited:

(i) money, including digital currency, and raw materials, products, equipment of any kind, and any other personal property involved in the money laundering;

(ii) personal property constituting or derived from proceeds obtained directly or indirectly from the money laundering; and

(iii) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to commit or facilitate the commission of, or that is derived from or maintained by the proceeds resulting from, the money laundering.

(b) The sheriff of the county where forfeited property is located shall sell the property at auction. The proceeds of the sale must be deposited in the state general fund.

(4) For purposes of this section, "digital currency" means money represented by digital information that is stored, spent, and transferred electronically by a person as part of a financial transaction.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to [section 1].

Approved April 19, 2005

CHAPTER NO. 277

[HB 326]

AN ACT CHANGING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF POSSESSION OF METHAMPHETAMINE; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR THE ESTABLISHMENT AND MAINTENANCE OF RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAMS AND TO ADOPT RULES FOR THE PROGRAMS; AND AMENDING SECTIONS 41-5-206, 45-9-102, AND 53-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) assault with a weapon as defined in 45-5-213;
- (v) robbery as defined in 45-5-401;
- (vi) burglary or aggravated burglary as defined in 45-6-204;
- (vii) aggravated kidnapping as defined in 45-5-303;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal distribution of dangerous drugs as defined in 45-9-101;
- (x) criminal possession of dangerous drugs as defined in 45-9-102(4) ~~and (5) through (6)~~;
- (xi) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;
- (xiv) escape as defined in 45-7-306;
- (xv) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xiv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

- (a) a youth court proceeding and disposition will serve the interests of community protection;
- (b) ~~that~~ the nature of the offense does not warrant prosecution in district court; and
- (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be

transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) *A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:*

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

~~(5)(6)~~ A person convicted of criminal possession of dangerous drugs not otherwise provided for in ~~subsection (2), (3), or (4)~~ subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

~~(6)(7)~~ A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

~~(7)(8)~~ Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 3. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, *rules for the establishment and maintenance of residential methamphetamine treatment programs*, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.

The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) *residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.*

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.”

Approved April 19, 2005

CHAPTER NO. 278

[HB 379]

AN ACT ESTABLISHING A PERMANENT TRUST FUND FOR LONG-TERM OR PERPETUAL WATER TREATMENT AT THE ZORTMAN AND LANDUSKY MINE SITES; REQUIRING A TWO-THIRDS VOTE BY THE LEGISLATURE TO APPROPRIATE THE PRINCIPAL OF THE TRUST; DIRECTING THE TRANSFER OF FUNDS FROM THE ORPHAN SHARE ACCOUNT TO THE PERMANENT TRUST FUND; AMENDING SECTION 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Long-term or perpetual water treatment permanent trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) funds transferred from the orphan share account pursuant to 75-10-743; and

(b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

Section 2. Section 75-10-743, MCA, is amended to read:

“75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, *except as provided in subsections (10) and (11)*, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection (10)~~, to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

~~(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;~~

~~(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

~~(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;~~

~~(e)(e)~~ unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)(f)~~ interest income on the account;

~~(g)(g)~~ funds received from settlements pursuant to 75-10-719(7); and

~~(h)(h)~~ funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until

all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(10) For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199, Laws of 2003, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

(11) (a) *Beginning in the fiscal year that commences July 1, 2005, the department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in [section 1] \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (11)(b) of this section.*

(b) (i) *The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in [section 1] to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.*

(ii) *When the board of investments makes the determination, pursuant to subsection (11)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination, pursuant to subsection (11)(b)(i), in order to provide a fund balance of \$19.3 million on January 1, 2018.*

(iii) *In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years."*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 1].

Section 4. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Fort Belknap tribal government.

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 279

[HB 406]

AN ACT ADOPTING THE COUNTRY OF ORIGIN PLACARDING ACT; REQUIRING A COUNTRY OF ORIGIN PLACARD ON SPECIFIC COMMODITIES OFFERED FOR SALE IN MONTANA; PROVIDING PENALTIES FOR OFFERING FOR SALE SPECIFIC COMMODITIES WITHOUT INDICATING THE COUNTRY OF ORIGIN AND FOR REMOVING LABELS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP RULES TO IMPLEMENT THE COUNTRY OF ORIGIN PLACARDING ACT; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Country of Origin Placarding Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(2) "Label" has the meaning provided in 50-31-103.

(3) "Labeling" has the meaning provided in 50-31-103.

(4) "Package" has the meaning provided in 50-31-103.

(5) "Person" means an individual, partnership, corporation, company, society, or association.

(6) "Placard" has the meaning provided in 50-31-103.

Section 3. Labeling permitted — when placarding required — removal of label prohibited — exemption. (1) All producers, growers, and shippers of beef, pork, poultry, or lamb in this state are permitted to label each individual portion, piece, or package of beef, pork, poultry, or lamb in a conspicuous place as legibly, indelibly, and permanently as the nature of the commodity will permit, in a manner that indicates to an ultimate purchaser that the product was produced in Montana.

(2) Muscle cuts and ground beef, pork, poultry, or lamb, including any package that contains any blending of foreign and domestic product, that is produced in any country other than the United States and offered for retail sale in Montana must be labeled with a placard in a manner that indicates to an ultimate purchaser the country of origin.

(3) If one of the products enumerated in subsection (2) is unlabeled and the retail vendor is unable to determine its country of origin, the product must be labeled with a placard as "country of origin unknown".

(4) All retail vendors engaged in the business of selling products that are labeled or identified as to country of origin are prohibited from willfully or knowingly removing the labels or identifying marks.

(5) A placard is not required for prepared foods for immediate sale or ready to eat.

Section 4. Penalties. (1) A person engaged in the business of retail vending of muscle cuts and ground beef, pork, poultry, or lamb who knowingly or purposely offers those products for sale without ensuring that the products are clearly labeled as to the country of origin, as provided in [section 3(2)], is subject to the following penalties:

(a) for a first offense, a vendor shall be fined an amount not to exceed \$100;

(b) for a second offense, a vendor shall be fined an amount not to exceed \$250; and

(c) for a third or subsequent offense, a vendor shall be fined an amount not to exceed \$500.

(2) A person engaged in the business of retail vending of beef, pork, poultry, or lamb who knowingly removes any labels or identifying marks from beef, pork, poultry, or lamb that is labeled as to the country of origin is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) As used in this section, "knowingly" and "purposely" have the meanings provided in 45-2-101.

Section 5. Department authorized to adopt rules. (1) The department may develop, adopt, and administer rules for the efficient enforcement of [sections 1 through 5]. The rules adopted by the department may include but are not limited to:

(a) statements that delineate the difference between imported and unimported raw agricultural commodities for the purpose of [sections 1 through 5];

(b) the preferred labeling or placarding method for each commodity type identified in [sections 1 through 5]; and

(c) other rules that the department considers necessary to enforce [sections 1 through 5].

(2) The rules adopted to implement [sections 1 through 5] may not unduly restrict a person from conducting business.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 30, chapter 12, and the provisions of Title 30, chapter 12, apply to [sections 1 through 5].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Contingent voidness. Upon the funding and full implementation of federal mandatory country of origin labeling, adopted as part of the 2002 federal farm bill, [sections 1, 2(1), (3), (5), and (6), 3(2) through (5), 4, and 5 of this act] are void.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2006.

(2) [Section 3(1) and this section] are effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 280

[HB 425]

AN ACT GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS AND TELEMARKETING LAWS BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; REQUIRING COURTS TO AWARD ATTORNEY FEES TO THE PREVAILING PARTY IN AN ACTION FOR UNFAIR TRADE PRACTICES; TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 30-14-102, 30-14-121, 30-14-131, 30-14-143, 30-14-201, 30-14-202, 30-14-220, 30-14-222, 30-14-226, 30-14-1403, 30-14-1407, 30-14-1412, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-525, 61-4-526, AND 61-4-532, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of ~~administration~~ *justice* created in ~~2-15-1001~~ *2-15-2001*.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 2. Section 30-14-121, MCA, is amended to read:

"30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department ~~such~~ *the* assistance ~~as that~~ the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney ~~or the attorney general~~, on request of the department or ~~a~~ *another* county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone ~~or the attorney general on request of the county attorney~~, the ~~person prosecuting county attorney~~ shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney ~~or attorney general~~ shall ~~make a report thereon~~ *on the action* to the department within 30 days of the final disposition of the matter."

Section 3. Section 30-14-131, MCA, is amended to read:

"30-14-131. Restoration — court orders. (1) The court may enter orders or judgments necessary to restore to a person any money or property, real or personal, that may have been acquired by means of any practice in this part declared to be unlawful, ~~including~~. *The court may order* the appointment of a receiver or the revocation of a license or certificate authorizing ~~that~~ *a* person to engage in business in this state, or both.

(2) *The court shall award reasonable attorney fees to the prevailing party for bringing a successful action under this part.*

(2)(3) The court may enter any other order or judgment required by equity to carry out the provisions of this part."

Section 4. Section 30-14-143, MCA, is amended to read:

"30-14-143. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.~~

~~(3)~~(2) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county ~~where in which~~ the action was commenced.”

Section 5. Section 30-14-201, MCA, is amended to read:

“30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part ~~shall~~ *must* be ~~literally~~ *liberally* construed so that its beneficial purposes may be ~~suberved~~ *accomplished*.”

Section 6. Section 30-14-202, MCA, is amended to read:

“30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Article of commerce” includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include a product or service of a public utility.

(2) “Business” includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) “Cost”, as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) “Cost of doing business” or “overhead expense” includes all costs of doing business incurred in the conduct of a business and includes but is not limited to the following items of expense:

- (a) labor (including salaries of executives and officers);
- (b) rent;
- (c) interest on borrowed capital;
- (d) depreciation;
- (e) selling cost;
- (f) maintenance of equipment;
- (g) delivery costs;
- (h) credit losses;
- (i) all types of licenses;
- (j) taxes;
- (k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of ~~administration~~ *justice* provided for in ~~2-15-1001~~ *2-15-2001*.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person."

Section 7. Section 30-14-220, MCA, is amended to read:

"30-14-220. Enforcement by department. (1) The department may prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the ~~director of the department~~ or to make a written reply to show probable cause of a violation. If probable cause is shown, the department may make its own investigation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part or if it appears to the department that a proceeding by ~~it the department~~ would be in the interest of the public, ~~it the department~~ may issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, the location of the hearing, and the date of the hearing, which may not be less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department ~~in its discretion~~ at any time 5 days prior to the issuance of an order based on ~~it the complaint~~.

(c) A person who is the subject of a complaint may appear at the hearing and show cause why an order should not be entered by the department requiring the person to stop the violation of the law charged in the complaint.

(d) Any person may apply and upon showing good cause be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding must be reduced to writing and filed with the department.

(f) If upon the conclusion of the hearing the department determines that the act or conduct in question is prohibited by this part, ~~it the department~~ shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring the person to stop the act or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner ~~it the department~~ considers proper, modify or set aside, in whole or in part, a report or an order made or issued by ~~it the department~~ under this section.

(4) A court reviewing an order of the department may issue writs that are ancillary to ~~its the court's~~ jurisdiction or that are necessary ~~in its judgment~~ to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall issue ~~its own~~ *an* order requiring compliance with the terms of the order of the department.

(6) Proceedings under this section must be given precedence over other civil cases pending in the district court and must be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the *state department* a penalty of not more than \$10,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.”

Section 8. Section 30-14-222, MCA, is amended to read:

“30-14-222. Injunctions — damages — production of evidence. (1) ~~Any~~ A person who is or will be injured, ~~or the department, or the attorney general~~ may ~~maintain~~ *bring* an action to enjoin an act that is in violation of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 and for the recovery of damages. If the court finds that the defendant is violating or has violated any of the provisions of 30-14-205, ~~through 30-14-214, or 30-14-216 through 30-14-218,~~ *it the court* shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the greater of three times the amount of actual damages sustained or \$1,000.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to \$500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, or 30-14-224.

(4) In an action brought by a party other than the ~~state department~~, the prevailing party is entitled to attorney fees and costs.”

Section 9. Section 30-14-226, MCA, is amended to read:

“30-14-226. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.”~~

Section 10. Section 30-14-1403, MCA, is amended to read:

“30-14-1403. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of ~~administration~~ *justice* created in ~~2-15-1001~~ *2-15-2001*.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer."

Section 11. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, ~~attorney general~~, and county attorney. (1) The department, ~~the attorney general~~, and a county attorney

have the same authority ~~in enforcing~~ to enforce and ~~carrying~~ carry out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into ~~the~~ a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in ~~30-14-1405~~ 30-14-1406. Any excess civil fines, costs, or fees must be deposited in the general fund.

~~(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in 30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund.~~

~~(4)~~(3) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county ~~where in which~~ the action was commenced.”

Section 12. Section 30-14-1412, MCA, is amended to read:

“30-14-1412. Abusive acts and practices. (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

- (a) use threatening, intimidating, or profane or obscene language;
- (b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;
- (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;
- (d) engage in telemarketing to a person’s residence at any time other than between 8 a.m. and 9 p.m. local time at the called person’s location;
- (e) engage in any other conduct that would be considered abusive to any reasonable consumer; or
- (f) intentionally block a person using caller identification or “*69” from accessing the seller’s or telemarketer’s phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity’s personnel can be contacted.

(2) The department ~~or the attorney general~~ may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.”

Section 13. Section 30-14-1413, MCA, is amended to read:

“30-14-1413. Civil remedies — venue — burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, ~~the attorney general~~, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception."

Section 14. Section 30-14-1601, MCA, is amended to read:

"30-14-1601. Definitions. As used in this part, the following definitions apply:

(1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Department" means the department of ~~administration~~ *justice* provided for in ~~2-15-1001~~ *2-15-2001*.

(3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

- (ii) the entity is required by law or rule to develop and maintain a no-call list;
- (e) by a natural person responding to a referral or working from the person's primary residence; or
- (f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state."

Section 15. Section 30-14-1603, MCA, is amended to read:

"30-14-1603. Department to ~~create~~ provide for no-call list database — rules — inclusion of national database — database not public record — no cost to subscribers. (1) The department shall ~~establish and~~ provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. ~~The department shall have the database in operation no later than January 1, 2004.~~ A residential subscriber may be listed in the database without cost to the subscriber.

(2) ~~Not later than January 1, 2004, the~~ The department shall promulgate rules and regulations governing the ~~establishment of a~~ state no-call database that are necessary and appropriate to fully implement the provisions of this part. The rules must include but are not limited to rules specifying:

- (a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

- (b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

- (c) the methods by which pertinent information may be collected and added to the no-call database;

- (d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

- (e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

- (f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to 30-14-1605. The information may not be considered a public record pursuant to Title 2, chapter 6.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list."

Section 16. Section 61-4-507, MCA, is amended to read:

“61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of administration to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, ~~as those provisions read on October 1, 1983,~~ unless the consumer has first resorted to that procedure without satisfaction.”

Section 17. Section 61-4-511, MCA, is amended to read:

“61-4-511. Manufacturer’s dispute settlement procedure — certification — prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 ~~(16 CFR, part 703), as those provisions read on October 1, 1983,~~ shall submit a copy of the procedure to the department of administration. The department of administration shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2). ~~The department of administration shall report to the department of justice all and shall maintain a record of the manufacturer’s procedures certified.~~ The department of administration may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to ~~it the~~ department in an investigation related to the certification of a manufacturer’s informal dispute settlement procedure.

(2) A manufacturer’s informal dispute settlement procedure must afford the consumer or the consumer’s representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer’s representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).”

Section 18. Section 61-4-512, MCA, is amended to read:

“61-4-512. Annual audit — revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department of administration a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 ~~(16 CFR, part 703), as those provisions read on October 1, 1983,~~ along with any additional information that the department of administration may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department of administration may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a

manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. ~~The department of administration shall notify the department of justice of any revocation or suspension of a certification.~~ The department of administration may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

Section 19. Section 61-4-515, MCA, is amended to read:

"61-4-515. Arbitration procedure. (1) ~~The department of administration~~ shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an ~~arbitration panel~~ *arbitrator* only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure that has been certified by the department of administration under 61-4-511."

Section 20. Section 61-4-516, MCA, is amended to read:

"61-4-516. Selection of arbitrator. An arbitrator for a grievance under this part must be chosen by the department of administration. ~~The department of administration~~ shall maintain a list of persons willing to serve as an arbitrator."

Section 21. Section 61-4-517, MCA, is amended to read:

"61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department of administration. The consumer shall file, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute and shall return the form, along with a \$50 filing fee, within 5 days after receiving ~~it the form~~. The ~~complaint~~ form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) ~~The department of administration~~ shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department of administration determines that a complaint does not allege a warranty violation, it shall refund the filing fee.

(3) Upon acceptance of a complaint, the department of administration shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute. The manufacturer shall return the form within 15 days of receipt, with a filing fee of \$250.

(4) Fees collected under this section must be deposited in a special revenue ~~fund~~ *account* for the use of the department of administration in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the ~~department of administration~~ *department's* arbitration procedures are used."

Section 22. Section 61-4-518, MCA, is amended to read:

"61-4-518. Arbitration — role of department of administration justice — expert. (1) The department of administration shall investigate,

gather, and organize all information necessary for a fair and timely decision in each dispute. The department of ~~administration~~ may, on behalf of the arbitrator, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the arbitrator, the department of ~~administration~~ may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the arbitrator. The expert, at the arbitrator's request, may be present whenever oral testimony is presented."

Section 23. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by arbitrator — decision. (1) The arbitrator shall, as expeditiously as possible, but not later than 60 days after the department of ~~administration~~ has accepted a complaint, render a fair decision based on the information gathered and disclose the arbitrator's findings and reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

- (a) repair of the vehicle;
- (b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;
- (c) refund as provided in 61-4-503(2);
- (d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or
- (e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of ~~administration~~ shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. ~~If it is determined by the court~~ *determines* that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

Section 24. Section 61-4-520, MCA, is amended to read:

"61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, ~~as in effect on October 1, 1983,~~ may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department of ~~administration panel arbitrator~~. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department of ~~administration~~ *department's* arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute."

Section 25. Section 61-4-525, MCA, is amended to read:

“61-4-525. Notice on resale of replaced vehicle. A motor vehicle ~~which~~ *that* is returned to the manufacturer and ~~which that~~ requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The department of justice may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective.”

Section 26. Section 61-4-526, MCA, is amended to read:

“61-4-526. Records of disputes. The department of ~~administration~~ shall maintain records of each dispute as it determines *appropriate*, including an index of disputes by brand name and model. The department of ~~administration~~ shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. The statistical summary must be considered by the department of ~~administration~~ in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2.”

Section 27. Section 61-4-532, MCA, is amended to read:

“61-4-532. Rulemaking. The department of ~~administration~~ may adopt rules to implement the provisions of this part.”

Section 28. Transition. (1) The provisions of 2-15-131 through 2-15-137 apply to [this act].

(2) Agencies involved in the reorganization and transfer of certain governmental functions may:

- (a) reallocate existing personnel across and within the involved agencies;
- (b) adjust indirect cost rates commensurate with costs for central management functions; and
- (c) reallocate and adjust spending authority for indirect charges to the programs of agencies involved in the reorganization.

Section 29. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 30. Code commissioner instruction. Whenever legislation enacted by the 59th legislature refers to the “department of administration” that under [this act] would refer to the department of justice, the code commissioner shall change the reference in the enacted legislation to conform to [this act].

Section 31. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 281

[HB 668]

AN ACT PROVIDING EXCEPTIONS AND EXEMPTIONS TO PROHIBITIONS ON POSSESSION OF EXOTIC WILDLIFE FOR ROADSIDE MENAGERIES AND SCIENTIFIC TESTING FACILITIES; PROVIDING ENFORCEMENT ABILITY AND PRESCRIBED REMEDIES TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR VIOLATIONS;

PROVIDING THE FISH, WILDLIFE, AND PARKS COMMISSION WITH AUTHORITY TO GRANT EXCEPTIONS; AMENDING SECTIONS 87-5-703, 87-5-704, 87-5-709, 87-5-712, AND 87-5-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-703, MCA, is amended to read:

“87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to ~~the importation of wildlife for the commercial pet trade or to~~ the provisions on importation or introduction of wildlife contained in the following laws:

- (1) Title 80;
- (2) 87-3-207 and 87-3-208;
- (3) 87-3-221 through 87-3-224 or 87-3-209, 87-3-210, and 87-3-225 through 87-3-227;
- (4) 87-4-422;
- (5) 87-5-112;
- (6) 87-5-205;
- (7) 87-5-302; or
- (8) Title 81, chapter 2.”

Section 2. Section 87-5-704, MCA, is amended to read:

“87-5-704. Rulemaking. (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 *and 87-5-712* regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) (a) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

(b) The department may adopt rules regarding the amnesty program provided for in 87-5-709(2).”

Section 3. Section 87-5-709, MCA, is amended to read:

“87-5-709. Exceptions and exemptions to possession and sale of exotic wildlife. (1) Sections 87-5-705 through 87-5-708 and this section do not apply to:

(a) *institutions that have established that their proposed facilities are adequate to provide secure confinement of wildlife, including:*

~~(a)(i) an accredited zoological garden chartered by the state as a nonprofit corporation if the zoological garden establishes that the proposed facilities are adequate to provide secure confinement of the exotic wildlife in question;~~

(ii) *a roadside menagerie permitted under 87-4-803 that was established for the purpose of exhibition or attracting trade;*

(iii) *a research facility for testing and science that employs individuals licensed under 37-34-301 or that submits evidence to the department that it meets animal testing standards as provided by the national institutes of health, the national science foundation, the centers for disease control and prevention, the United States department of agriculture, or another similar nationally recognized and approved testing standard; or*

(b) domestic animals.

~~(2) The department shall institute and administer an amnesty program for exotic wildlife possessed by a person as of January 1, 2004, who is not in compliance with 87-5-705 through 87-5-708. Until January 1, 2005, a person who reports that person's noncompliance to the department may not be prosecuted for a violation based on the reported noncompliance. Possession authorization. Authorization for possession must be provided by the department for species exotic wildlife possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.”~~

Section 4. Section 87-5-712, MCA, is amended to read:

“87-5-712. Authority for commission to control importation, possession, or sale of certain wildlife species and exotic wildlife. The commission may, after public hearing and recommendation by the classification review committee in 87-5-708, list by administrative rule wildlife species or exotic wildlife that may not be imported, possessed, or sold as pets for captive breeding for research or commercial purposes, for the commercial pet trade, or for any other reason. A wildlife species or exotic wildlife may be placed on the list only after the commission finds that:

(1) the exotic wildlife would not be readily subject to control by humans while in captivity;

(2) if released from captivity, the exotic wildlife would pose a substantial threat to native wildlife and plants or agricultural production; or

(3) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

(4) *The commission may make exceptions for wildlife species or exotic wildlife otherwise prohibited under this section if the wildlife species or exotic wildlife is controlled in an institution listed in 87-5-709(1)(a) and under any conditions specified by the commission.”*

Section 5. Section 87-5-721, MCA, is amended to read:

“87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person who violates a provision of this

part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than \$500 or more than \$5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend \$500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person.

(3) *Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within 6 months of a conviction or sooner if ordered by the court. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.*

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 282

[HB 721]

AN ACT ESTABLISHING THE MONTANA DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT; RECOGNIZING A JURISDICTIONAL BASIS FOR STATE COURTS TO IMPLEMENT A VOLUNTARY DRUG OFFENDER ACCOUNTABILITY AND TREATMENT PROGRAM FOR QUALIFYING DRUG OFFENDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it; and

WHEREAS, requiring that accountability and rehabilitating treatment, in addition to or in place of conventional and expensive incarceration, will promote public safety and the welfare of individuals involved, reduce the burden on the general fund, and benefit the common welfare of this state; and

WHEREAS, state courts already have the jurisdiction to implement drug treatment courts via the inherent power of each respective court; and

WHEREAS, the goals of this legislation include but are not limited to reducing recidivism, reducing substance abuse, increasing the personal, familial, and societal accountability of drug offenders to productive, law-abiding, and taxpaying citizens, and reducing the costs of incarceration.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the “Drug Offender Accountability and Treatment Act”.

Section 2. Purpose. The purpose of [sections 1 through 9] is to recognize that state courts have a jurisdictional basis to implement drug treatment courts to reduce recidivism and restore drug offenders to being productive, law-abiding, and taxpaying citizens.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) “Assessment” means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under [sections 1 through 9] and would benefit from the provisions of [sections 1 through 9].

(2) “Continuum of care” means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) “Drug” includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) “Drug offender” means a person charged with a drug-related offense or an offense in which substance abuse is determined to have been a significant factor in the commission of an offense.

(5) “Drug treatment court” means a court established by a court pursuant to [sections 1 through 9] implementing a program of incentives and sanctions intended to assist a participant to end the participant’s addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) “Drug treatment court coordinator” means an individual who, under the direction of the drug treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) “Drug treatment court team” means a group of individuals appointed by the drug treatment court that may consist of the following members:

- (a) the judge, which may include a magistrate or other hearing officer;
 - (b) the prosecutor;
 - (c) the public defender or defense attorney;
 - (d) a law enforcement officer;
 - (e) the drug treatment court coordinator;
 - (f) a probation and parole officer;
 - (g) substance abuse treatment providers;
 - (h) a representative from the department of public health and human services; and
 - (i) any other person selected by the drug treatment court.
- (8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.
- (9) "Recidivism" means any arrest for a serious offense that results in the filing of a charge and can carry a sentence of 1 or more years;
- (10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.
- (11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.
- (12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

Section 4. Drug treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a drug treatment court under which drug offenders may be processed to address an identified substance abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, defense attorney, and the court pursuant to a written agreement.

(3) A drug treatment court may grant reasonable incentives under a written agreement if the court finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement, including incarceration or rejection from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily in drug treatment

court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include:

- (a) a short-term jail sentence;
- (b) fines;
- (c) extension of time in the program;
- (d) peer review;
- (e) geographical restrictions;
- (f) termination; or
- (g) contempt of court.

(5) Upon successful completion of drug treatment court, a drug offender's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A drug offender who successfully completes the program may be given credit for the time the offender served in the drug treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation of an existing drug treatment court shall establish a local drug treatment court team.

(7) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug treatment court session to discuss and provide updated information regarding drug offenders. After determining the offender's progress or lack of progress, the drug treatment court team shall agree on the appropriate incentive or sanction to be applied. If the drug treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting.

(8) The provisions of [sections 1 through 9] apply only to offenders who qualify for participation based on qualifications established by each drug treatment court. The provisions of [sections 1 through 9] do not apply to drug offenders who have been convicted of a sexual or violent offense, as defined in 46-23-502. [Sections 1 through 9] do not confer a right or expectation of a right to participate in a drug treatment court and do not obligate a drug treatment court to accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(9) Each drug offender shall contribute to the cost of substance abuse treatment in accordance with [section 7(2)].

(10) A drug treatment court coordinator is responsible for the general administration of a drug treatment court under the direction of the drug treatment court judge.

(11) The supervising agency shall timely forward information to the drug treatment court concerning the drug offender's progress and compliance with any court-imposed terms and conditions.

(12) A department of corrections probation and parole officer may participate in a drug treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a drug treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a drug treatment court program who has not been convicted of a felony offense and committed to the supervision of the department.

Section 5. Treatment and support services. (1) As part of a diagnostic assessment, each jurisdiction shall establish a system to ensure that drug offenders are placed into a clinically approved substance abuse treatment program. To accomplish this, the program conducting the individual assessment shall make specific recommendations to the drug treatment court team regarding the type of treatment program and durations necessary so that a drug offender's individualized needs are addressed. The assessments and recommendations must be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to [sections 1 through 9] must be considered to be reasonable and necessary.

(2) An adequate continuum of care for drug offenders must be established in response to [sections 1 through 9].

(3) The drug treatment court shall, when practicable, ensure that one agency may not provide both assessment and treatment services for the drug treatment court to avoid potential conflicts of interest or the appearance that a diagnostic assessment agency might benefit by determining that an offender is in need of the particular form of treatment that the agency provides.

(4) A drug treatment court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(5) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court must be governed by a memorandum of understanding, which must include the timely reporting of the drug offender's progress or lack of progress to the drug treatment court.

(6) Offenders must be provided with adequate support services and aftercare.

(7) The length of stay in treatment must be determined by the drug treatment court team based on individual needs and accepted practices.

Section 6. Drug testing. (1) The drug treatment court team shall ensure fair, accurate, and reliable drug testing procedures.

(2) A drug offender must be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(3) The results of all drug tests must be provided to the drug treatment court team as soon as practicable but, in the event of a positive drug test, not later than 7 days from the test.

(4) Anyone in receipt of drug test results shall maintain the information in confidentiality.

(5) A drug offender is responsible for costs, pursuant to [section 7(2)].

Section 7. Funding. (1) There is a drug treatment court federal resources account in the federal special revenue fund that is administered by the office of the supreme court administrator. Any federal money received for funding drug treatment courts must be deposited in the drug treatment court federal resources account and may be used only for purposes of [sections 1 through 9]. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the drug treatment court federal resources account.

(2) A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a drug offender may not exceed \$300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender's ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs under this subsection (2). Any fees received by the court from an offender are not court costs, charges, or fines.

(3) Funding must be provided from the drug treatment court federal resources account or other available resources for a period of 5 years from [the effective date of this act] to research the impact of Montana drug treatment courts on recidivism and money saved as a result of implementing [sections 1 through 9].

(4) All federal funds received from grants for purposes of funding drug treatment courts must be exhausted before money is spent from other appropriations for that purpose.

(5) [Sections 1 through 9] do not prohibit drug treatment court teams from obtaining supplemental funds.

(6) [Sections 1 through 9] do not supplant funds currently utilized by drug treatment courts.

Section 8. Statutory construction. The provisions of [sections 1 through 9] must be construed to effectuate its remedial purposes.

Section 9. Enforcement. A violation of [sections 1 through 9] must be referred to the appropriate court or other responsible governing body for resolution.

Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46, chapter 1, apply to [sections 1 through 9].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 283

[SB 61]

AN ACT PROVIDING FOR APPOINTMENT OF TWO LEGISLATIVE LIAISONS TO THE STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS; PROVIDING COMPENSATION AND LENGTH OF SERVICE; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1019, MCA, is amended to read:

“2-15-1019. Board of directors of state compensation insurance fund — legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least four of the seven members ~~must~~ *shall* represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(8) *There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee, provided for in 5-5-223. The presiding officer of the economic affairs interim committee shall appoint the liaisons from two separate political parties at the first interim committee meeting.*

(9) *Legislative liaisons shall serve from appointment through each even-numbered calendar year.*

(10) *A legislative liaison may:*

(a) *attend board meetings; and*

(b) *receive board meeting agendas and information relating to agenda items from the staff of the state fund.*

(11) Legislative liaisons, appointed pursuant to subsection (8), are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee.”

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to appointments made on or after [the effective date of this act].

Approved April 18, 2005

CHAPTER NO. 284

[SB 88]

AN ACT PROVIDING THAT AN ELECTOR MAY REQUEST ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING FOR A REQUEST FORM; AMENDING SECTIONS 13-13-212 AND 13-13-214, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions. (1)

An elector may apply for an absentee ballot, using only a standardized form provided by rule by the secretary of state, by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector’s place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) *When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.*

(b) *The election administrator shall mail an address confirmation form at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election*

administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official paper absentee ballots are printed, the election administrator shall immediately send by mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) *a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);*

~~(a)~~(b) a secrecy envelope, free of any marks that would identify the voter; and

~~(b)~~(c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 18, 2005

CHAPTER NO. 285

[SB 299]

AN ACT REVISING DEFINITIONS, COMPONENTS, AND PROCESSES REGARDING THE PRIVATIZATION OF STATE SERVICES AND PRIVATIZATION PLANS; EXTENDING AND IMPOSING DEADLINES REGARDING PRIVATIZATION PLANS AND REVIEW OF PRIVATIZATION PLANS; REQUIRING THE LEGISLATIVE AUDIT COMMITTEE TO MAKE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS REGARDING PRIVATIZATION PLANS; REQUIRING THE GOVERNOR TO APPROVE OR DISAPPROVE PRIVATIZATION PLANS; AND AMENDING SECTIONS 2-8-301, 2-8-302, 2-8-303, AND 5-13-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-8-301, MCA, is amended to read:

“2-8-301. Definitions. As used in this part, the following definitions apply:

(1) “Agency” means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government.

(2) “Private sector” means any entity or individual not principally a part of or associated with a governmental unit that is associated with or involved in commercial activity.

(3) (a) “Privatize” means an agency contracting with the private sector to provide services *that are currently or normally conducted directly by the employees of the agency if the contract displaces five or more current state employees state. For the purposes of this subsection, an employee is displaced if the privatization proposal will result in his layoff, demotion, or involuntary transfer to a new location requiring a change in residence of the employee.*

(b) *The term does not include contracting with the private sector to provide services on a temporary or emergency basis.*

(4) “Program” means a legislatively or administratively created function, project, or duty of an agency.”

Section 2. Section 2-8-302, MCA, is amended to read:

“2-8-302. Privatization plan — hearing — role of legislative audit committee — action by governor. (1) Before an agency may privatize a program, it shall prepare a privatization plan as provided in 2-8-303.

(2) The privatization plan must be released to the public and ~~any affected employee organizations~~ *to all unions that represent state employees* and must be submitted to the legislative audit committee at least ~~90~~ *180* days prior to the proposed implementation date.

(3) At least ~~60~~ *90* days prior to the proposed implementation date, the legislative audit committee shall conduct a public hearing on the proposed privatization plan at which public comments and testimony must be received.

(4) At least ~~15~~ 45 days prior to the proposed implementation date, the legislative audit committee shall release to the public a summary of the results of the hearing, ~~including any recommendations of the committee relating to the proposed privatization plan and the findings and conclusions of the legislative audit committee.~~

(5) (a) *At least 30 days prior to the proposed implementation date, the legislative audit committee shall vote to recommend approval or disapproval of the privatization plan to the governor and transmit the recommendation in writing to the governor.*

(b) *The recommendation of the legislative audit committee is advisory only.*

(6) *At least 15 days prior to the proposed implementation date, the governor shall approve or disapprove the privatization plan, stating in writing the reasons for approval or disapproval."*

Section 3. Section 2-8-303, MCA, is amended to read:

"2-8-303. Privatization plan — contents. (1) An agency proposing to privatize a program shall prepare a privatization plan that includes the following:

(a) a description of the program to be privatized, including references to the legal authority under which the program was created;

(b) detailed budget information that includes a list of expenditures for the 2 most recent fiscal years and the sources of revenue for the program;

(c) a list of all personnel currently employed in the program and the estimated effect of the proposed privatization on ~~their~~ the employment status of each employee affected;

(d) a listing of the assets of the program and their proposed disposition if the plan is implemented;

(e) an estimate of the cost savings or any additional costs resulting from privatizing the program, compared to the costs of the existing, nonprivatized program. Additional costs must include the estimated cost to the state of inspection, supervision, and monitoring of the proposed privatization and the costs incurred in the discontinuation of such a contract.

(f) the estimated current and future economic impacts of the implementation of the plan on other state programs, including public assistance programs, unemployment insurance programs, retirement programs, and agency personal services budgets used to pay out accrued vacation and sick leave benefits;

(g) the estimated increases or decreases in costs and quality of goods or services to the public if the plan is implemented;

(h) the estimated changes in individual wages and benefits resulting from the proposed privatization;

(i) *the ways in which the proposed privatization will deliver the same or better services at a lower cost; and*

~~(j)~~ (j) a narrative explanation and justification for the proposed privatization.

(2) To implement the privatization plan, an agency may transfer funds between budget categories."

Section 4. Section 5-13-203, MCA, is amended to read:

“5-13-203. Meetings — compensation. (1) The committee shall meet:

(a) as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor; *and*

(b) *to review privatization plans and to make findings, conclusions, and recommendations as required under the provisions of 2-8-302.*

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.”

Approved April 19, 2005

CHAPTER NO. 286

[SB 302]

AN ACT GENERALLY REVISING ELECTION LAWS; REVISING VOTER REGISTRATION PROVISIONS; REVISING WHEN BALLOTS MUST BE PRINTED; REVISING VOTER IDENTIFICATION REQUIREMENTS; REVISING PROVISIONS ON ABSENTEE VOTING; CLARIFYING HOW REJECTED BALLOTS ARE HANDLED; REVISING PROVISIONS GOVERNING STANDARDS FOR VOTING SYSTEMS; AND AMENDING SECTIONS 13-2-108, 13-2-110, 13-2-115, 13-2-301, 13-2-514, 13-13-201, 13-13-205, 13-13-212, 13-13-213, 13-13-232, 13-13-233, 13-13-241, 13-13-243, 13-15-107, 13-15-201, 13-17-103, AND 13-17-212, MCA; REPEALING SECTIONS 13-2-302 AND 13-15-203, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector’s voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information prior to the close of the polls on election day.

(b) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector’s voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator’s office.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector’s voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector’s registration to vote in a school election held pursuant to Title 20.

Section 2. Section 13-2-108, MCA, is amended to read:

“13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

- (b) proper maintenance and use of active and inactive lists;
- (c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;
- (d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;
- (e) technical security of the statewide voter registration database;
- (f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and
- (g) quality control measures for the system and system users.

(3) *The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.*

Section 3. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.

(1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides ~~before the close of registration as provided in 13-2-301.~~

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed. ~~An application for voter registration properly executed and postmarked on or before the day registration is closed must be accepted for 3 days after the close of registration.~~

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) If an applicant does not have a driver's license or social security number:

(a) an applicant appearing in person before the election administrator shall provide:

(i) current and valid photo identification, including but not limited to ~~a valid driver's license~~, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) an applicant applying *by mail* to register ~~by mail~~ shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to ~~a valid driver's license~~, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 4. Section 13-2-115, MCA, is amended to read:

"13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) Immediately after *regular* registration is closed *under 13-2-301*, the secretary of state shall certify the official statewide voter registration list.

(2) Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections (5) and (6), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(3) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(4) Lists of registered electors need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(6) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (6)(b), that the individual, or a minor in the custody of the individual, has been the victim of

partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (6)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 5. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of regular registration — procedure notice — changes. (1) The election administrator shall:

(a) close *regular* registrations for 30 days before any election; and

(b) ~~publish~~ *broadcast* a notice specifying the day *regular* registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or *publish the notice* in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) *An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).*

(3)(4) An individual who submits a completed registration form to the election administrator before the ~~deadline~~ *deadlines* provided in ~~subsection (1)(a)~~ *this section* is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of *regular* registration, and the qualified elector is then eligible to vote in the ~~next~~ *election at the polling place for that elector's precinct.*

(5) *Subject to the provisions of [section 1], an elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in [section 1]."*

Section 6. Section 13-2-514, MCA, is amended to read:

"13-2-514. Change of residence to another county. (1) ~~An~~ *Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.*

(2) An elector who changes residence to a different county 45 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) *update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of [section 1].*

(3) The registration information of an elector ~~who votes under the provisions of subsection (2) whose information is changed pursuant to this section~~ must be updated in the statewide voter registration list ~~after the election~~ pursuant to rules adopted under 13-2-108.”

Section 7. Section 13-13-201, MCA, is amended to read:

“13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee only by paper ballot and by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affidavit printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage prepaid, or by delivering it to the election administrator of the special absentee election board *established pursuant to 13-13-225*.

(3) (a) ~~The~~ A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector ~~shall~~ may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) ~~If the elector fails to provide the information required under subsection (3)(a) or the information provided is insufficient to verify the elector's identity and eligibility, the~~ An elector's absentee ballot must be handled as a provisional ballot *provided in 13-13-241.*”

Section 8. Section 13-13-205, MCA, is amended to read:

“13-13-205. When paper ballots to be available. (1) The election administrator shall ensure that paper ballots are printed and available for absentee voting at least:

(a) 30 days prior to an election for those elections held in compliance with ~~13-1-104(1) and~~ 13-1-107(1);

~~(2)(b) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that paper ballots are printed and available for absentee voting at least 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and~~

(c) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

~~(3)(2)~~ If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410.”

Section 9. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions. (1)

An elector may apply for an absentee ballot, using ~~only~~ a standardized form provided by rule by the secretary of state; ~~or~~ by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.”

Section 10. Section 13-13-213, MCA, is amended to read:

“13-13-213. Transmission of application to election administrator — delivery of ballot. (1) *All absentee ballot application forms must be addressed to the appropriate election official.*

(1)(2) Except as provided in subsection (3) (4), the elector ~~shall~~ *may* mail the application directly to the election administrator or deliver the application in person to the election administrator. ~~With the exception of an immediate family member, as defined in 15-30-602, or a guardian, or a third party may not collect applications for absentee ballots from electors~~ *the elector's application and forward the applications to the election administrator.*

(2)(3) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(3)(4) In lieu of the requirement provided in subsection (1) (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.”

Section 11. Section 13-13-232, MCA, is amended to read:

“13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator

shall process it according to 13-13-241 and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-13-243(1)."

Section 12. Section 13-13-233, MCA, is amended to read:

"13-13-233. Issue Issuing and record of recording absentee ballots — certificate to election judges. (1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to 13-13-214 or 13-21-207, delivered pursuant to 13-13-229, and or marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

Section 13. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) As soon as an absentee ballot is received, an election administrator shall compare the signature of the elector on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) *If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.*

(c) (i) ~~Except as provided in subsection (2), after comparing the signatures~~ *If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.*

(ii) *If the voter identification information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.*

(iii) *If voter identification information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.*

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

~~(b)~~(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

~~(c)~~(4) ~~A ballot cast by an elector who provided sufficient information must be handled as provided in subsection (3). A ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107. The~~ *If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.*

~~(2)~~(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243(1).

~~(3)~~(6) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box."

Section 14. Section 13-13-243, MCA, is amended to read:

"13-13-243. Rejected absentee ballots — *handling provided by rule.*

(1) ~~The~~ *All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes shall must be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name) handled and marked as provided under rules adopted by the secretary of state.*

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be ~~marked "voted in person" and initialed by a majority of the election judges~~ *handled and marked as provided under rules adopted by the secretary of state.*

(3) The unopened absentee ballot envelope of an elector who dies before election day shall ~~must be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place~~ *handled and marked as provided under rules adopted by the secretary of state.*

(4) ~~All~~ After being handled and marked as provided in this section, all rejected ballots ~~shall~~ must be placed in ~~the sealed~~ a package or container in which the voted ballots are ~~required~~ to be placed and ~~the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state.~~ After a package or container is sealed pursuant to this subsection (4), a package or container may not be opened without a court order."

Section 15. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, ~~an~~ a provisionally registered elector who casts a provisional ballot in person shall provide information to the election administrator as listed below:

(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);

(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a); or

(c) mail a *nonreturnable* copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(2) (a) *If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.*

(b) *If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).*

(c) *If the signatures do not match, the ballot must be rejected and handled as provided in 13-13-243.*

~~(2)(3)~~ (3) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.

~~(3)(4)~~ (4) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, ~~a~~ if the election administrator cannot verify the elector's eligibility under the rules, the elector's provisional ballot ~~may not be counted if the election administrator cannot verify the elector's eligibility under the rules must be rejected and handled as provided in 13-13-243.~~

~~(4)(5)~~ (5) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

~~(5)~~(6) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.”

Section 16. Section 13-15-201, MCA, is amended to read:

“13-15-201. Preparation for count. (1) (a) Subject to 13-10-311, to prepare for a manual or automatic count of paper ballots before or after the close of the polls, the counting board of election judges designated under 13-15-112 shall take ballots out of the box unopened to determine whether each ballot is single.

(b) If an absentee ballot counting board has been appointed pursuant to 13-15-112, the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall, subject to 13-13-244, remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single. An absentee ballot must be rejected *and handled as provided in 13-13-243* if in the envelope there is more than one voted ballot for each election.

(c) The counting board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(d) If the counting board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(e) A ballot that is not marked as official is void and may not be counted unless all judges on the counting board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked “unmarked by error” on the back and must be initialed by all judges.

(f) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected *and handled as provided in 13-13-243*; otherwise they must be counted.

(2) For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to 13-17-211.”

Section 17. Section 13-17-103, MCA, is amended to read:

“13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);

(g) may be protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting; ~~and~~

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) *records votes in a manner that allows the votes to be printed on paper so that votes can be manually counted or audited if necessary; and*

(l) *allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.*

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.”

Section 18. Section 13-17-212, MCA, is amended to read:

“13-17-212. Performance certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall test and certify that the system is performing properly.

(2) *The secretary of state shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year.*

(3) *If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:*

(a) *upon delivery;*

(b) *no more than 30 days prior to the election; and*

(c) *on election day.*

(4) ~~The test and certification provisions of this section must be conducted implemented~~ according to rules adopted by the secretary of state pursuant to 13-17-211.”

Section 19. Repealer. Sections 13-2-302 and 13-15-203, MCA, are repealed.

Section 20. Instruction to code commissioner. Section 13-13-243 is intended to be renumbered and codified in Title 13, chapter 15, part 1.

Section 21. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 1 and 3 through 6] are effective July 1, 2006.

Approved April 18, 2005

CHAPTER NO. 287

[SB 324]

AN ACT PROVIDING FOR PRESCRIPTION DRUG ACCESS AND INFORMATION; PROVIDING FOR A STATE PHARMACY ACCESS PROGRAM TO COMPLEMENT THE FEDERAL MEDICARE PART D PROGRAM; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ADMINISTER THE PROGRAM; PROVIDING FOR A PRESCRIPTION DRUG CONSUMER INFORMATION AND TECHNICAL ASSISTANCE PROGRAM AND EDUCATION OUTREACH FOR CONSUMERS AND PROFESSIONALS; AMENDING THE PRESCRIPTION DRUG EXPANSION PROGRAM AS A STATE PHARMACY DISCOUNT PROGRAM; AMENDING SECTIONS 53-6-1001, 53-6-1002, 53-6-1003, 53-6-1010, 53-6-1013, AND 53-6-1201, MCA; REPEALING SECTION 13, CHAPTER 551, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State pharmacy access program. (1) The department shall administer a pharmacy access prescription drug benefit program that contributes to the cost of the premium and, optionally, to the cost of the deductible for the Part D medicare prescription drug benefit as established in Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(2) An individual is eligible for the pharmacy access program if the individual:

(a) has a family income, as adopted by rule, of up to 200% of the federal poverty guidelines set annually by the U.S. department of health and human services and is not eligible for federal low-income assistance under Part D;

(b) submits proof of enrollment in a prescription drug plan for the Part D medicare benefit.

(3) The department shall establish by rule eligibility based upon the applicant's family income within the range provided in subsection (2). The department may adopt rules defining income. In establishing eligibility based upon income, the department shall take into account the amount of funding available for the program.

(4) The department shall set an amount of benefit for the premium and may optionally set a portion of the deductible by rule based on the numbers enrolled and the appropriation.

(5) The department shall open the enrollment of the pharmacy access program at the same time as enrollment commences for the medicare Part D program.

(6) If the department determines that there are excess funds for the pharmacy access program, it may use the funds for the program provided for in 53-6-1002.

Section 2. Department administration — pharmacy access. (1) The department shall administer the pharmacy access program. The department shall provide for outreach and enrollment in the pharmacy access program. The department shall integrate the enrollment and outreach procedures with other services provided to individuals and families eligible for other related programs.

(2) The department shall report on Montana's prescription drug use, needs, and trends and submit a report with recommendations to the governor and to the legislature by September 15, 2006.

Section 3. Prescription drug consumer information and technical assistance program — education outreach for consumers and professionals. (1) There is a prescription drug consumer information and technical assistance program in the department to provide Montana residents with advice on the prudent use of prescription drugs and how to access government and private prescription drug programs and discounts. The program must include consultation by licensed pharmacists with individuals on how to avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

(2) The department shall create educational resources, including a website, concerning the costs and benefits of various drugs to inform consumers and medical practitioners on clinically effective and cost-conscious prescription drugs.

Section 4. Section 53-6-1001, MCA, is amended to read:

“53-6-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Average wholesale price” means the wholesale price charged on a specific ~~commodity~~ *drug* that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) “Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) “Discounted price” means ~~a price that is less than or equal to the average wholesale a price, minus a percentage between 6% and 25% determined set by the department by rule pursuant to 53-6-1002.~~

(4) “Gross household income” has the meaning provided in 15-30-171.

(5) “Manufacturer” means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(6) “Participating retail pharmacy” means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

(7) “Program” means the ~~medicaid~~ prescription drug *plus discount* program provided for in 53-6-1002.

(8) “*Secondary discounted price*” means *the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program.*”

Section 5. Section 53-6-1002, MCA, is amended to read:

“53-6-1002. Prescription drug expansion *plus discount* program — rules. (1) ~~By July 1, 2004, or upon securing any necessary waivers, the~~ *The* department ~~shall provide for an expansion of~~ *may provide for a* prescription drug benefits under the *medicaid plus discount* program by offering prescription drugs at a discounted price to qualified individuals whose income is at a level set by the department at or below ~~200%~~ *250%* of the federal poverty level *and who meet the requirements in 53-6-1003.* ~~Subject to subsection (7), the department shall charge an annual application fee of \$25 for the program. The application fee must be deposited in the medicaid prescription drug rebate account established in subsection (2).~~

(2) There is a ~~medicaid~~ prescription drug *plus discount program* rebate account in the state special revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical manufacturers for the ~~medicaid prescription drug expansion~~ program must be deposited in the account. The money in the account, which is administered by the department, must be used to expand ~~medicaid~~ prescription drug benefits *to qualified individuals*. Interest on account balances accrues to the account. The purpose of the account is to:

(a) reimburse participating retail pharmacies for the ~~discount on the average wholesale price of prescription drugs provided to qualified residents pursuant to this part~~ *secondary discounted price*; and

(b) reimburse the department for contracted services, administrative costs, associated computer costs, professional fees paid to participating retail pharmacies, *pharmacy benefit administrators*, and other reasonable program costs.

(3) The department shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the department on the basis of the calculated need of the recipient population and available funds. The department may not spend more on this program than is available through appropriations, federal or other grants, and other established and committed funding sources. The department may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly, and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and may accept from any other agency of government, individual, group, or corporation funds that may be available to carry out this part.

(4) The department may adopt rules relating to the conduct of this program. ~~The rules may be based upon rules adopted in other states to administer similar programs.~~

(5) The department shall, *if the department determines that sufficient funds are available*, adopt rules to establish the *secondary* discounted price to be charged to participants in the program. The department may establish a *secondary* discounted price to encourage the use of generic drugs over higher-cost brand-name drugs.

(6) The department shall establish by rule eligibility based upon the applicant's family income as provided in 53-6-1003. The total income may not exceed ~~200%~~ *250%* of the federal poverty level. The department may adopt rules defining income. In establishing eligibility based upon income, the department shall take into account the amount of funding available for the program. The department shall issue enrollment ~~cards~~ *materials* to eligible individuals.

(7) Establishment of the ~~prescription drug expansion~~ program is contingent upon ~~approval by the federal government that the program in this part will qualify for federal financial participation under compliance with all applicable federal laws implementing the medicaid program.~~ The department may adopt rules necessary to implement conditions required by federal law ~~or conditions required as part of the federal government's agreement to waive certain requirements of federal law.~~

(8) If program costs are expected to exceed the legislative authorization for the program, the department shall adjust discounted prices, ~~the application fee,~~ or eligibility standards to maintain the program within the available funding.

(9) *Participation in the program by a pharmacy or a pharmaceutical manufacturer is voluntary.*

(10) (a) *The department may not contract with either an in-state or out-of-state mail service pharmacy, as defined in 37-7-702, for the purposes of the program for at least 1 year after persons eligible for the program have begun to purchase drugs through the program. At that time, the department shall evaluate the number of pharmacies within the state providing prescription drugs as part of the program.*

(b) *If the department determines that there are insufficient pharmacies participating in the program to allow reasonable access to persons qualified to purchase prescription drugs through the program, it may, after the evaluation provided for in subsection (10)(a), use one or more in-state or out-of-state mail service pharmacies, or both, for the purposes of the program."*

Section 6. Section 53-6-1003, MCA, is amended to read:

"53-6-1003. Eligibility — income determination. ~~(1)~~ To be eligible for the program, an individual ~~must be~~ shall:

~~(a)(1) at least 62 years of age reside in a household with an income level less than or equal to 250% of the federal poverty guidelines as adopted by the U.S. department of health and human services; and~~

~~(b)(2) 18 years of age or older and determined to be disabled by the federal social security program; or~~

~~(c) eligible for mental health services pursuant to 53-21-702(2) lack prescription drug coverage or provide documentation that the individual has exceeded the coverage of the individual's prescription drug benefits.~~

~~(2) Subject to 53-6-1002(8), individuals are eligible for the program if the gross household income is at or below the amount set by the department, which may not be more than 200% of the federal poverty level. (Subsection (1)(c) void on occurrence of contingency—sec. 11, Ch. 551, L. 2003.)"~~

Section 7. Section 53-6-1010, MCA, is amended to read:

"53-6-1010. Specifications for administration of program. (1) The department shall adopt specifications for the administration and management of the program. Specifications may include but are not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation methodology. ~~The department shall apply for any waivers of federal law that are necessary to implement the program.~~

(2) Information disclosed by manufacturers during negotiations and all terms and conditions negotiated between the director and manufacturers and all information requested or required under the program ~~must be kept confidential~~ are public information, except as for information that the department determines is necessary to carry out the program proprietary information. ~~The department shall comply with the budget neutrality provisions required by the United States department of health and human services for the granting of any waivers.~~

(3) *The department may use a formulary or other committee to determine preferred drug lists for department programs. The department shall include a representative of consumers on any formulary committee or committee to determine preferred drug lists for purchase by the department or reimbursement of costs. Any formulary or preferred drug list must be based on objective clinical data on safety and effectiveness. If two or more drugs are found to be equally*

effective and safe for the treatment of the same medical condition, the drug available at the lowest net price, inclusive of discounts and rebates, must be placed on the list. Other drugs for treating the same medical condition may be added to the list if they are therapeutically equivalent and the department determines them to be cost-effective.

(4) The department may negotiate rebates from the prescription drug manufacturers for drugs that will be on any preferred drug list. The department may negotiate price discounts with prescription drug manufacturers for any state-purchased health care programs, including medicaid, the state children's health insurance program, and the program provided for in 53-6-1002.

~~(3)(5) The department may not may use the access restrictions; supplemental rebates, or a and a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in 53-6-1002. to negotiate for the most favorable discount prices and rebates for the program.~~

(6) The department may participate in multistate purchasing pool initiatives for the benefit of the program. (Subsection (3) terminates June 30, 2005—sec. 13, Ch. 551, L. 2003.)

Section 8. Section 53-6-1013, MCA, is amended to read:

"53-6-1013. Contracting. The department may contract for the administration of any components of the program, including but not limited to outreach, eligibility, claims, administration, *price and rebate negotiations*, and drug rebate recovery and redistribution. *Any contract to administer any program component must prohibit the contractor from receiving any compensation or other benefit from any drug manufacturer, labeler, or distributor participating in the medicaid or prescription drug plus discount programs.*"

Section 9. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); *and*

(c) *any interest and income earned on the account.*

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) *(a) Except for \$1 million appropriated for startup costs related to [sections 1 and 2], the money appropriated for fiscal year 2006 for the program in subsection (3)(b) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.*

(b) On or before July 1, the budget director shall calculate a balance required to sustain the program in subsection (3)(b) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the department may expend the revenue for the program as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify the department. Upon receipt of the notification, the department shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 10. Contingency on expenditure. [Sections 1 through 3] and Title 53, chapter 6, part 10, may not be construed to require implementation or ongoing operation of the program under 53-6-1201(3)(b) without a line item appropriation in the general appropriations bill included for that purpose.

Section 11. Repealer. Section 13, Chapter 551, Laws of 2003, is repealed.

Section 12. Codification instruction. [Sections 1 through 3 and 10] are intended to be codified as an integral part of Title 53, chapter 6, part 10, and the provisions of Title 53, chapter 6, part 10, apply to [sections 1 through 3 and 10].

Section 13. Coordination instruction. If House Bill No. 667 and this bill are both passed and approved, section 53-6-1201 must read as follows:

“53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); *and*

(c) *any interest and income earned on the account.*

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~or~~

(e) to fund new programs to assist *eligible* small ~~businesses~~ *employers* with the costs of providing health insurance benefits to *eligible* employees; ~~if these tax credits or programs are established by the legislature after the effective date of this section;~~

(f) *the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in [sections 1 through 9 in House Bill No. 667]; and*

(g) *to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in [section 10 in House Bill No. 667].*

(4) (a) *Except for \$1 million appropriated for the startup costs of [sections 1 and 2 in Senate Bill No. 324], the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.*

(b) *On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.*

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 14. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 288

[HB 22]

AN ACT PROVIDING THE FINDINGS AND PURPOSE OF IMPLEMENTING A WATER ADJUDICATION FEE; PROVIDING BENCHMARKS AND ACTION, INCLUDING ELIMINATION OF THE FEE, THAT MUST BE TAKEN IF BENCHMARKS ARE NOT MET BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE REEXAMINATION, PRIOR TO THE ISSUANCE OF A FINAL DECREE, OF CLAIMS IN BASINS THAT WERE VERIFIED; DEFINING “OWNER” FOR PURPOSES OF THE WATER ADJUDICATION FEE; ESTABLISHING WATER ADJUDICATION FEES; PROVIDING THAT THE FEE DOES NOT APPLY TO FEDERAL WATER RIGHTS AND INDIAN RESERVED AND ABORIGINAL CLAIMS TO WATER; PROVIDING THAT THE DEPARTMENT OF REVENUE COLLECT THE FEE ON BEHALF OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSIGN ANY UNPAID FEES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; PROVIDING THAT A LIEN MAY BE PLACED ON A WATER RIGHT IF THE FEE IS NOT PAID AFTER COLLECTION EFFORTS; ESTABLISHING A WATER ADJUDICATION ACCOUNT; ESTABLISHING THE AMOUNT OF REVENUE ALLOCATED EACH YEAR FROM THE ACCOUNT; PROVIDING THAT THE FEE MAY NOT BE ASSESSED ONCE \$31 MILLION HAS BEEN DEPOSITED IN THE ADJUDICATION ACCOUNT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE WATER COURT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND THE APPLICABLE LEGISLATIVE APPROPRIATION SUBCOMMITTEES; PROVIDING THE PROCESS FOR EXAMINATION OF CLAIMS IN VERIFIED BASINS PRIOR TO THE ISSUANCE OF A FINAL DECREE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, 85-2-231, AND 85-2-237, MCA; AN PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings — purpose. (1) The purpose of [sections 1 through 10] is to generate revenue to adequately fund Montana’s water adjudication program to:

- (a) complete claims examination and the initial decree phase;
 - (b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to [section 9] or the water court has issued an order on its own initiative; and
 - (c) ensure that the product of the adjudication is enforceable decrees.
- (2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to [section 9] or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana.
- (3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by ensuring that the revenue generated by the water adjudication fee established in [section 5] is used only for the purpose of adjudicating Montana's water rights.

Section 2. Benchmarks — action taken if not met. (1) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in [section 9] or the water court issues an order on its own initiative.

(3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, the fee contained in [section 5] that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year. All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

Section 3. Definitions. For the purposes of [sections 1 through 10], the following definitions apply:

(1) “Calculated volume” means the feasible volume given the flow rate and period of use.

(2) “Person” means an individual, corporation, partnership, association, firm, or other legal entity.

(3) “Water right” means a legal right to the beneficial use of water as recorded in the centralized water recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder River declaration, statement of claim, stockwater permit, temporary provisional permit, or 1962 to 1973 ground water filings as recorded with the department or that portion of a water reservation that has been put to beneficial use. This definition applies only to the use of the term for the purposes of assessing the fee and [sections 1 through 10].

Section 4. Owner. (1) For the purposes of giving notice or imposing a fee, as provided for in [section 5], “owner”, as used in [sections 5 and 6] and this section, means the first enumerated entity on a water right.

(2) The owner is responsible for collecting the proportionate share of any fee from the other entities enumerated on the water right.

Section 5. Water adjudication fees — exceptions. (1) (a) Except as provided in subsection (1)(c), a water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights.

(b) Except as provided in [section 2], [section 7], and subsections (1)(c) and (10) of this section, an owner shall pay a biennial fee for the purpose of funding Montana’s water adjudication based on the fees established in subsections (4) through (7) of this section.

(c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and aboriginal claims to water.

(2) The water adjudication fee is due on January 31 of even-numbered years. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) (a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual cost of collecting the water adjudication fee.

(b) The department of revenue may not withhold more than 5% of the revenue generated.

(4) (a) An owner for the purposes described in subsections (4)(b) through (4)(f) shall pay according to a graduated scale. The number of water rights for which a fee must be paid on a per purpose basis is capped at 20 water rights a person for each graduated level.

(b) For a commercial water right with a claimed or calculated volume that is:

(i) 0 acre feet to 100 acre feet, the fee is \$20;

(ii) greater than 100 acre feet and less than or equal to 5,000 acre feet, the fee is \$1,000; and

(iii) greater than 5,000 acre feet, the fee is \$2,000.

(c) For an industrial water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(d) For a mining water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(e) For a municipal water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(f) For a power generation water right, both consumptive and nonconsumptive, with a claimed or calculated volume that is:

(i) 0 acre feet to 100,000 acre feet, the fee is \$20;

(ii) greater than 100,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

(iii) greater than 1 million acre feet, the fee is \$2,000.

(5) Except for instream flow water rights used for irrigation purposes or for the purposes identified in subsection (4), an instream flow water right or an instream flow water reservation, with a claimed or calculated volume that is:

(a) 0 acre feet to 50,000 acre feet, the fee is \$20;

(b) greater than 50,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

(c) greater than 1 million acre feet, the fee is \$2,000.

(6) The fee for an irrigation water right or irrigation claim that is part of an irrigation district, ditch company, canal company, irrigation project, water user's association, or other organized group with the purpose of allocating irrigation water is \$20 a user, with the fee capped at 40 users. The fee must be paid by the user. If an irrigation district, ditch company, or water user's association has more than 40 users, the fee may not exceed \$800 and must be split equally among the users.

(7) The fee for all water rights that are not subject to subsections (4) through (6) is \$20. The fee is capped at 20 water rights a person for purposes that are not addressed in subsections (4) through (6).

(8) The fees established in subsections (4) through (7) apply to all water rights on record with the department that are not withdrawn or terminated.

(9) A person may file an administrative appeal with the department to contest the total amount of the fee assessed against the person or a fee imposed based on incorrect ownership records.

(10) Fees authorized in this section may not be assessed after June 30, 2014.

Section 6. Debt collection. If the owner of a water right does not pay the fee after receiving an initial bill statement and one reminder bill statement:

(1) the department shall turn over the debt to the department of revenue for collection pursuant to Title 17, chapter 4; and

(2) if efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.

Section 7. Water adjudication account. (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

(3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication account from the fee provided for in [section 5] may not exceed \$31 million.

(b) If federal funds are appropriated for the purposes of [sections 1 through 10], the maximum amount that may be deposited in the account must be reduced by the amount of federal funds appropriated.

(c) Once revenue generated from the fees provided for in [section 5] and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.

(4) Interest and income earnings on the water adjudication account must be deposited in the account.

(5) Revenue remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

Section 8. Reporting requirements. The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

(a) the progress of the adjudication; and

(b) the total revenue generated by the fees established in [section 5] and deposited in the account provided for in [section 7];

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money, state special revenue funds, and the allocated fee revenue.

Section 9. Examination of claims in verified basins. (1) At any time prior to the issuance of a final decree, in basins that were evaluated using the verification process rather than the examination process, the owners of water rights in the basin or a specified area in the basin may petition the water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

(2) The owners of at least 15% of the number of water rights affected by the proposed reexamination shall sign the petition.

(3) At a minimum, the petition must provide:

(a) the specific water right purpose or water right purposes to be examined; and

(b) the elements to be examined.

(4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to provide greater accuracy to the adjudication.

(b) The water judge may request public comment on the petition.

(5) If the water judge determines reexamination should be conducted, the water judge shall issue an order that provides:

(a) what water right purpose or water right purposes must be examined by the department;

(b) the elements to be examined;

(c) final disposition of the reexamination information developed by the department; and

(d) the timeframe in which the reexamination must be completed.

(6) The water court may issue an order requiring reexamination on its own initiative. The order must provide the information contained in subsection (5).

(7) Upon receipt of the reexamination information from the department, the water court shall notify the users in the basin or the specified area in the basin identified in the petition of the final results of the reexamination and shall notify them regarding further steps or actions being taken as a result of the reexamination.

(8) Any actions taken as a result of the reexamination must be conducted in accordance with this part.

Section 10. Rulemaking authority. The department may adopt rules for the purpose of implementing [sections 1 through 10].

Section 11. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 *and [section 5]*.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.”

Section 12. Section 85-2-231, MCA, is amended to read:

“85-2-231. Temporary preliminary and preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

(6) The department shall examine claims in basins that were verified rather than examined as ordered by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims."

Section 13. Section 85-2-237, MCA, is amended to read:

"85-2-237. Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; ~~or~~

(b) for basins for which claims have been filed under 85-2-221(3); *or*

(c) for basins that were verified and not examined for which the water court has received a petition and has determined that examination is necessary as provided in [section 9] or the water court has issued an order for reexamination on its own initiative.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; *or*

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) ~~No~~ *An* objection may *not* cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

(10) *An order requiring the department to examine a basin that was initially verified is limited to the types of claims in the basin that were identified in the petition as provided in [section 9] or the types of claims identified in an order that the water court issued on its own initiative."*

Section 14. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 10].

Section 15. Contingent voidness. If at least \$2 million is not appropriated in a line item for each fiscal year from state sources other than the water adjudication account provided for in [section 7], for the purposes of funding Montana's water adjudication program, then [this act] is void.

Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 17. Effective date. [This act] is effective July 1, 2005.

Section 18. Termination. [This act] terminates June 30, 2020.

Approved April 20, 2005

CHAPTER NO. 289

[HB 67]

AN ACT GENERALLY REVISING PROVISIONS OF THE MONTANA PROCUREMENT ACT; PROVIDING THAT THE PUBLIC HAS THE RIGHT TO INSPECT COMPETITIVE SEALED BIDS AFTER THEY ARE OPENED, SUBJECT TO SPECIFIED LIMITATIONS; PROVIDING THAT ART PURCHASED OR COMMISSIONED FOR A MUSEUM OR PUBLIC DISPLAY IS EXEMPT FROM THE ACT; REVISING THE INFORMATION IN A BID OR OFFER THAT MAY NOT BE DISCLOSED; REMOVING THE SUNSET FROM THE PROVISION AUTHORIZING AN AGENCY TO REQUEST AN ALTERNATIVE PROCUREMENT METHOD; REMOVING THE CAP ON THE AMOUNT FOR WHICH A LETTER OF CREDIT MAY BE ISSUED;

PROVIDING AN EXCEPTION TO HOW LONG PERFORMANCE SECURITY ON A CONTRACT MUST BE KEPT; CLARIFYING EXCEPTIONS TO THE CONTRACT TIME PERIOD LIMIT SPECIFIED IN THE ACT; AMENDING SECTIONS 18-4-126, 18-4-132, 18-4-301, 18-4-303, 18-4-304, 18-4-308, 18-4-312, AND 18-4-313, MCA; REPEALING SECTION 29, CHAPTER 181, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-126, MCA, is amended to read:

“18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.”

Section 2. Section 18-4-132, MCA, is amended to read:

“18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

- (d) consulting actuaries;
 - (e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;
 - (f) a private consultant employed by the Montana state lottery;
 - (g) a private investigator licensed by any jurisdiction;
 - (h) a claims adjuster; or
 - (i) a court reporter appointed as an independent contractor under 3-5-601.
- (7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or state university, as defined in 20-25-201.
- (b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.
- (8) *This chapter does not apply to the purchase or commission of art for a museum or public display.*

Section 3. Section 18-4-301, MCA, is amended to read:

~~18-4-301. (Temporary) Definitions.~~ As used in this part, the following definitions apply:

- (1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.
- (2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.
- (3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.
- (b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.
- (4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:
 - (a) is regularly maintained by a manufacturer or contractor;
 - (b) is either published or otherwise available for inspection by customers; and
 - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (5) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.
- (6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.
- (7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.
- (8) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(9) "Responsible bidder or offeror" means ~~a person who has~~ the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(10) "Responsive bidder" means ~~a person who has submitted a bid that~~ conforms in all material respects to the invitation for bids *or request for proposals*.

(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time. ~~(Terminates June 30, 2005—sec. 29, Ch. 181, L. 2001.)~~

18-4-301. (Effective July 1, 2005) Definitions. As used in this part, the following definitions apply:

(1) ~~"Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.~~

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.~~

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) ~~"Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.~~

(5) ~~"Office supply" means an item included under the office supply commodity class codes maintained by the department.~~

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) ~~"Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.~~

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) ~~"Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."~~

Section 4. Section 18-4-303, MCA, is amended to read:

“18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid opening.

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder *and any member of the public* has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids: *after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.*

(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.

(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of ~~2-6-102~~ and are subject to the requirements of subsection (4) *18-4-126.*

~~(4) Bids must be available for public inspection when the bids are opened if:~~

~~(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and~~

~~(b) acceptance of bids would result in the displacement of five or more state employees.~~

~~(5)~~(6) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

~~(6)~~(7) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

~~(7)~~(8) ~~The contract~~ *If an award is made, it must be awarded made* with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the ~~low~~ *lowest* responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in

situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the ~~low~~ lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

~~(8)~~(9) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.”

Section 5. Section 18-4-304, MCA, is amended to read:

“18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) After the proposals have been opened at the time and place designated in the request for proposals *and reviewed by the procurement officer for release*, proposal documents may be inspected by the public, subject to the limitations of:

(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;

(b) matters involving individual safety as determined by the department;
and

~~(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308; and~~

~~(d)~~(c) other constitutional protections.

(5) The request for proposals must state the evaluation ~~factors~~ *criteria* and their relative importance. ~~The award~~ *If an award is made, it* must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other ~~factors or~~ *criteria* may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.”

Section 6. Section 18-4-308, MCA, is amended to read:

“18-4-308. Nonresponsibility of bidders and offerors — nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to ~~such~~ *that* bidder or offeror.

~~(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.”~~

Section 7. Section 18-4-312, MCA, is amended to read:

“18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

(i) a sufficient bond with a licensed surety company as surety;

(ii) an irrevocable letter of credit ~~not to exceed \$100,000~~ in accordance with the provisions of Title 30, chapter 5, part 1;

(iii) money of the United States;

(iv) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period, *except as provided pursuant to an agency liquor store franchise agreement under 16-2-101*. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder *or offeror* to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

Section 8. Section 18-4-313, MCA, is amended to read:

“18-4-313. Contracts — terms, extensions, and time limits. (1) ~~Unless Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for hardware, software, or other information technology resources, the department of revenue may contract with liquor agencies, and the department of public health and human services may contract for the medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.~~

(2) *The contract term limit specified in subsection (1) does not apply to:*

(a) *a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;*

(b) *a department of revenue liquor store contract governed by the term specified in 16-2-101; and*

(c) *a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608.*

(2)(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3)(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.”

Section 9. Repealer. Section 29, Chapter 181, Laws of 2001, is repealed.

Section 10. Effective date. [This act] is effective July 1, 2005.

Approved April 20, 2005

CHAPTER NO. 290

[HB 156]

AN ACT ESTABLISHING RECIPROCAL TIME LIMITS FOR HEALTH INSURANCE CLAIM FILING, CLAIM REIMBURSEMENTS, AND CLAIM AUDITS; SETTING A TIME LIMIT FOR HEALTH INSURANCE ISSUERS TO SEEK REIMBURSEMENT OR AN OFFSET OF A CLAIM AND PROVIDING EXCEPTIONS TO THE TIME LIMIT; REQUIRING AN AGREEMENT TO USE CURRENT CLAIM PAYMENTS TO OFFSET PAST OVERPAYMENTS OR INVALID PAYMENTS; AMENDING SECTION 33-22-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reciprocal limitations on claim filing and claim audits — time limit for reimbursements or offsets — exceptions. (1) Except as provided in subsection (3), (4), or (5), if a health insurance issuer limits the time in which a health care provider or other person is required to submit a claim for payment, the health insurance issuer has the same time limit following payment of the claim to perform any review or audit for reconsidering the validity of the claim and requesting reimbursement for payment of an invalid claim or overpayment of a claim.

(2) Except as provided in subsection (3), (4), or (5), if a health insurance issuer does not limit the time in which a health care provider or other person is required to submit a claim for payment, a health insurance issuer may not request reimbursement or offset another claim payment for reimbursement of an invalid claim or overpayment of a claim more than 12 months after the payment of an invalid or overpaid claim.

(3) Regardless of the period allowed by a health insurance issuer for submission of claims for payment, a health insurance issuer may perform a review or audit to reconsider the validity of a claim and may request reimbursement for an invalid or overpaid claim within 12 months from the date upon which the health insurance issuer received notice of a determination, adjustment, or agreement regarding the amount payable with respect to a claim by:

- (a) medicare;
- (b) a workers' compensation insurer;
- (c) another health insurance issuer or group health plan;
- (d) a liable or potentially liable third party; or

(e) a foreign health insurance issuer under an agreement among plans operating in different states when the agreement provides for payment by the Montana health insurance issuer as host plan to Montana providers for services provided to an individual under a plan issued outside of the state of Montana.

(4) (a) The time limitations on the health insurance issuer in subsections (1) and (2) do not commence running until the time specified in subsection (4)(b) if a health insurance issuer pays a claim in which the health insurance issuer:

(i) suspects the health care provider or claimant of insurance fraud related to the claim; and

(ii) has reported evidence of fraud related to the claim to the commissioner pursuant to 33-1-1205.

(b) The time limitation commences running on the date that the commissioner determines that insufficient evidence of fraud exists.

(5) The time limitations on the health insurance issuer in subsections (1) and (2) do not commence running until the health insurance issuer has actual knowledge of an invalid claim, claim overpayment, or other incorrect payment if the health insurance issuer has paid a claim incorrectly because of an error, misstatement, misrepresentation, omission, or concealment, other than insurance fraud, by the health care provider or other person. Regardless of the date upon which the health insurance issuer obtains actual knowledge of an invalid claim, claim overpayment, or other incorrect payment, this subsection does not permit the health insurance issuer to request reimbursement or to offset another claim payment for reimbursement of the claim more than 24 months after payment of the claim.

Section 2. Offset agreement. A health insurance issuer may not collect a claim overpayment or other reimbursement by offsetting another claim payment made to a health care provider or other person unless the health care provider or other person has previously authorized the health insurance issuer in writing to recover an overpayment or other reimbursement by offsetting a future claim payment.

Section 3. Section 33-22-101, MCA, is amended to read:

“33-22-101. Exceptions to scope. ~~Parts (1)~~ *Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:*

~~(1)~~(a) any policy of liability or workers’ compensation insurance with or without supplementary expense coverage;

~~(2)~~(b) any group or blanket policy;

~~(3)~~(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

~~(a)~~(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

~~(b)~~(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity ~~in the event that if~~ the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

~~(4)~~(d) reinsurance.

~~(2)~~ [Sections 1 and 2] *apply to group or blanket policies.”*

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 1 and 2].

Section 5. Effective date — applicability. [This act] is effective January 1, 2006, and applies to claims made on or after January 1, 2006.

Approved April 19, 2005

CHAPTER NO. 291

[HB 295]

AN ACT PROHIBITING EXPIRATION DATES ON GIFT CARDS AND GIFT CERTIFICATES; ASSOCIATING OWNERSHIP WITH THE POSSESSOR OF THE CARD OR CERTIFICATE; LIMITING FEES; ALLOWING LIMITED CASH REDEMPTION; AND AMENDING SECTION 30-14-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Termination of gift certificate prohibited — fee limitation — redemption — posting required. (1) A gift certificate is valid until redemption and does not terminate. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate.

(2) The value represented by the gift certificate belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a gift certificate presented by an individual whose name does not match the name on the gift certificate.

(3) A gift certificate may not be reduced in value by any fee, including a dormancy fee applied if a certificate is not used.

(4) If the original value of the gift certificate was more than \$5 and the remaining value is less than \$5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the gift certificate for cash.

Section 2. Section 30-14-102, MCA, is amended to read:

“30-14-102. Definitions. As used in this part, the following definitions apply:

(1) “Consumer” means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) “Department” means the department of administration created in 2-15-1001.

(3) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) “Examination” of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) *“Gift certificate” means a record, including a gift card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.*

(b) *The term does not mean:*

(i) *prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;*

(ii) *a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or*

(iii) *a gift certificate usable with multiple sellers of goods or services.*

~~(5)~~(6) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) “Possessor” means a natural person who has physical control over a gift certificate.

~~(6)~~(8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 3. Codification instruction. [Section 1] is intended to be codified as integral parts of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 19, 2005

CHAPTER NO. 292

[HB 363]

AN ACT CHANGING THE MENTAL STATE ELEMENT OF AND EXPANDING THE OFFENSE OF ASSAULT WITH A BODILY FLUID; INCLUDING AN ASSAULT ON AN EMERGENCY RESPONDER OR A HEALTH CARE PROVIDER, INCLUDING A HEALTH CARE PROVIDER PERFORMING EMERGENCY SERVICES, WHILE THE HEALTH CARE PROVIDER IS ACTING IN THE COURSE AND SCOPE OF THE HEALTH CARE PROVIDER'S PROFESSION OR OCCUPATION; AND AMENDING SECTION 45-5-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-214, MCA, is amended to read:

"45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely or knowingly causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, ~~or a staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:~~

~~(a)~~(i) during or after an arrest for a criminal offense;

~~(b)~~(ii) while the person is incarcerated in or being transported to or from a state prison, ~~or a county, city, or regional jail or detention facility, or a health care facility; or~~

~~(c)~~(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, *health care facility*, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed in district court, in which case the district court has jurisdiction.

(4) As used in this section, ~~“bodily”~~ *the following definitions apply:*

(a) *“Bodily fluid” means any bodily secretion, including but not limited to feces, urine, blood, and saliva.*

(b) *“Emergency responder” means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.”*

Approved April 19, 2005

CHAPTER NO. 293

[HB 528]

AN ACT REMOVING SEASONAL RESTRICTIONS ON THE BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; IMPOSING AN ANNUAL FEE OF \$400 ON THE LESSEE OF A RETAIL BEER AND WINE LICENSE AT THE YELLOWSTONE AIRPORT; AMENDING SECTIONS 16-4-304 AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-304, MCA, is amended to read:

“16-4-304. ~~Seasonal beer~~ Beer and wine license for Yellowstone airport. (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine ~~from June 1 to October 1 of each year.~~

(4) ~~There is no annual fee for the license~~ *The lessee shall pay to the department of revenue an annual license fee as provided in 16-4-501.*

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-105;

(b) is nontransferable;

(c) does not permit gambling activities otherwise allowed under Title 23, part 5.”

Section 2. Section 16-4-501, MCA, is amended to read:

“16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions

of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; each domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$200; each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

(b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to

be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

(9) *The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.*

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

~~(10)~~(11) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(11)~~(12) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(12)~~(13) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2005

CHAPTER NO. 294

[HB 628]

AN ACT PROVIDING FOR A BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING FOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING BOARD DUTIES; REQUIRING A REPORT TO THE LEGISLATURE ON THE NEED FOR ANY ADDITIONAL REGULATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Board of private alternative adolescent residential or outdoor programs. (1) There is a board of private alternative adolescent residential or outdoor programs.

(2) The board consists of five members appointed by the governor with the consent of the senate for 3-year terms. The members must include:

(a) three members from a list of nominees provided by programs, as defined in [section 3], of various sizes and types; and

(b) two members who must be from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 2. Purpose. The purpose of the board is to examine the benefit of licensing private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

Section 3. Definitions. As used in [sections 2 through 4], the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in [section 1].

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

Section 4. Powers and duties of board — registration requirements.

(1) The board shall develop and implement a process for registration of programs and to set fees to carry out its duties under this section.

(2) The board shall:

(a) examine data gathered from the registration process;

(b) examine current regulations and standards applicable to these programs;

(c) determine additional regulations and standards that are needed;

(d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;

(e) determine the need for the continued existence of the board and its duties or responsibilities; and

(f) report to the economic affairs interim committee detailing the board's findings, recommendations, and proposed legislation, if any, by September 15, 2006.

(3) The board shall require information to be provided for registration of programs. The information includes but is not limited to:

(a) a description of the program and facility;

(b) a description of the population served by the program;

(c) the location and contact information for each program, including the person responsible for the conduct of the program;

(d) a list of professional and supervisory employees and relevant credentials and other qualifications;

(e) the average daily census;

(f) a copy of program policies and procedures on:

(i) admission;

(ii) behavior management;

(iii) communication with family members;

(iv) the availability of routine and emergency medical and psychological care; and

(v) medication management.

(4) The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size. The board shall make available to the public information on the name, address, and contact information for each registered program.

(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138, 37-1-141, and Title 37, chapter 1, parts 2 and 3.

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section 1].

(2) [Sections 2 through 4] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 2 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 295

[HB 745]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 2005. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. (1) Except as provided in subsection (2), the following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Department of Public Health & Human Services		
Child and Family Services Division	\$1,669,184	General Fund
Medicaid	\$2,000,000	General Fund
Child Support Enforcement Division	\$857,058	General Fund
Department of Corrections		
Secure Care and Community Corrections	\$4,415,657	General Fund
Department of Justice		
Legal Services Major Litigation	\$200,000	General Fund
Highway Patrol Retirement—Chapter 592, Laws of 2003 (HB 559)	\$363,762	General Fund
Exempt Staff Payout	\$24,000	General Fund
Exempt Staff Payout	\$33,000	State Special
Exempt Staff Payout	\$3,000	Proprietary Funds
Highway Patrol Settlement	\$8,500,000	General Fund
Office of the Governor		
Exempt Staff Payout—Change in Administration	\$163,683	General Fund
Ombudsman ineligible for federal funding	\$135,123	General Fund

Office of the Commissioner of Political Practices

Exempt Staff Payout—Change in Administration	\$10,262	General Fund
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Judicial Branch

District Court Reimbursement	\$6,800,000	General Fund
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Department of Natural Resources and Conservation

FY 2004 Fires	\$2,000,000	General Fund
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Crow Tribe Settlement	\$9,000,000	General Fund
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Department of Agriculture

Protecting Montana Cattle from Bovine Spongiform Encephalopathy (BSE)	\$41,318	General Fund
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Department of Revenue

Payoff IRIS loan and finish contractor payments	\$13,900,000	General Fund
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Department of Administration

Finish contractor payments on IRIS phase one	\$2,100,000	General Fund
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(2) If the actual common school interest and income revenue deposited in the guarantee account established in 20-9-622 by the end of fiscal year 2005 is less than the amount of common school interest and income revenue needed to make statutorily determined payments to school district BASE aid, with current House Bill No. 2 general fund BASE aid appropriation authority, then the office of public instruction school BASE aid general fund appropriation for the fiscal year ending June 30, 2005, is increased by the amount needed to make statutorily determined payments to school district BASE aid, with current House Bill No. 2 general fund BASE aid, up to a maximum of \$3 million in general fund money.

(3) If the budget director certifies that the judicial branch has district court expenditures, as provided in 3-5-901, that exceed \$21,006,994 in the 2005 biennium, the supreme court is appropriated up to a maximum of \$500,000 in additional general fund money for those expenses.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2005

CHAPTER NO. 296

[SB 1]

AN ACT PROVIDING FOR AN INDICATION ON A DRIVER'S LICENSE THAT A LICENSEE HAS EXECUTED A LIVING WILL DECLARATION; AND AMENDING SECTION 61-5-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-301, MCA, is amended to read:

“61-5-301. Indication on driver’s license of intent to make anatomical gift or of living will declaration. (1) The department of justice shall provide on each driver’s license ~~a space~~ *spaces* for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver’s body under the Uniform Anatomical Gift Act; *or*

(b) *executed a declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(2) The department shall provide each applicant, at the time of application for a new driver’s license or for a renewal, printed information calling the applicant’s attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift *and if the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(3) Each applicant must be given an opportunity to indicate in the ~~space~~ *spaces* provided under subsection (1) the applicant’s intent to make an anatomical gift *or that the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of the donor’s driver’s license.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver’s license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant’s donor status.”

Approved April 20, 2005

CHAPTER NO. 297

[SB 104]

AN ACT PROVIDING A GRADUATED DRIVER’S LICENSING PROGRAM, WITH MOTOR VEHICLE OPERATION RESTRICTIONS, FOR PERSONS UNDER 18 YEARS OF AGE; AMENDING SECTIONS 61-5-106 AND 61-5-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 5] is to create a graduated driver’s licensing program that will allow persons under 18 years of age to progressively develop and improve their driving skills in the safest possible environment and that will improve highway safety by reducing the disproportionately high incidence of motor vehicle accidents involving minors.

Section 2. Prerequisites for issuance of driver’s license to minor. (1) The department may issue a driver’s license, subject to the restrictions of [section 3], to a person under 18 years of age if the person:

(a) has held an instruction permit or traffic education learner's license for a period of not less than 6 months;

(b) has passed a road test or a skills test, as provided in 61-5-110;

(c) presents written certification from the person's parent or legal guardian that states that the person has had at least 50 hours of driving experience, 10 of which were at night, during which the person was supervised by a parent, a legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; and

(d) presents written certification from the person's parent or legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations.

(2) If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's instruction permit or traffic education learner's license for an additional 1-year period or until the person's 18th birthday, whichever occurs first.

(3) (a) The requirements of subsections (1)(a) through (1)(c) do not apply to a person under 18 years of age who has been licensed in another state for at least 6 months and surrenders a valid driver's license from that state.

(b) The requirements of subsection (1)(c) do not apply to a person under 18 years of age who, at the time of application for a driver's license, is an enrollee of a job corps program located in Montana. The department may require the applicant to provide current documentation of the applicant's job corps program enrollment status.

Section 3. First year restrictions on driver's license issued to minor.

(1) A driver's license issued to a person who is under 18 years of age is subject to the following restrictions for 1 year from the date of issuance of the license or until the person is 18 years of age, whichever occurs first:

(a) A restricted licensee may not operate a motor vehicle, required by 61-9-409 to be equipped with seatbelts, unless each occupant of the motor vehicle is wearing a seatbelt, as defined in 61-13-102, or is properly restrained, as required under 61-9-420. The number of motor vehicle occupants may not exceed the number of seatbelts with which the motor vehicle is equipped.

(b) A restricted licensee may not operate a motor vehicle between the hours of 11 p.m. and 5 a.m. unless the restricted licensee is:

(i) accompanied by a licensed driver who is 18 years of age or older or, if the restricted licensee is operating a motorcycle, the restricted licensee is under the immediate and proximate visual supervision of a licensed driver who is 18 years of age or older and who is riding with the licensee and is operating a separate motorcycle or other motor vehicle;

(ii) driving to the restricted licensee's place of employment from the restricted licensee's residence, is returning to the restricted licensee's residence from the restricted licensee's place of employment, or is driving in the course and scope of employment;

(iii) driving from the restricted licensee's residence to a school-sponsored event at a school attended by the restricted licensee, including any site for

school-provided transportation to and from the event, or is returning from the event or site to the restricted licensee's residence;

(iv) driving from the restricted licensee's residence to an event sponsored by a religious organization or is returning from the event to the restricted licensee's residence;

(v) driving for a purpose related to a medical emergency, fire emergency, or law enforcement-related emergency;

(vi) driving for the sole purpose of transporting farm or ranch products, machinery, or supplies within 150 miles of a farm or ranch headquarters;

(vii) an emancipated minor; or

(viii) driving under a specific authorization for a specific purpose from the restricted licensee's parent or legal guardian. A peace officer may verify the authorization by contacting the parent or legal guardian.

(c) (i) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than one passenger who is under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the restricted licensee's family.

(ii) For the second 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than three passengers who are under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the licensee's family.

(iii) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motorcycle with a passenger who is under 18 years of age.

(2) For purposes of this section, the term "restricted licensee" includes a person under 18 years of age who holds a motorcycle-only endorsement issued by the department and the term "motor vehicle" includes a motorcycle, except when otherwise noted.

Section 4. Operation of motor vehicle by minor in violation of restricted first-year license — penalty. (1) A person whose driver's license is restricted under [section 3] may not operate a motor vehicle, including a motorcycle, in violation of a restriction imposed under that section.

(2) A person convicted under this section shall be ordered to perform not less than 20 hours or more than 60 hours of community service.

(3) Upon receipt of a report of a second or subsequent conviction under this section, the department shall suspend the person's driver's license for 6 months. A probationary driver's license may not be issued during the period of suspension.

Section 5. Education on distracted driving. (1) The department, in consultation with the superintendent of public instruction, shall encourage schools providing traffic education to include in the school's traffic education

curriculum information regarding the dangers of physical and cognitive distractions while driving.

(2) To reduce the risks for novice drivers, the department shall include in its publications intended for novice drivers information concerning the dangers of physical and cognitive distractions while driving, including but not limited to mental inattentiveness because of stress, fatigue, heightened emotion, conversation with passengers, stereo or climate control adjustment, food and drink, use of electronic devices, and personal grooming.

Section 6. Section 61-5-106, MCA, is amended to read:

"61-5-106. Instruction permits — traffic education learner licenses and permits — temporary licenses. (1) (a) The department may issue an instruction permit, *which is valid for 1 year from the date of issuance*, to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination, as provided in 61-5-110. ~~An Except as provided in subsections (1)(b) and (1)(c), an instruction permit entitles the permittee permitholder, while in immediate possession of the permit and accompanied by a licensed driver seated beside the permittee permitholder, to drive a motor vehicle other than a motorcycle upon the public highways for a period of 6 months from the date the fees required in 61-5-111 are paid.~~

(b) *If the permitholder is under 18 years of age, the driver supervising the permitholder must be a parent or a legal guardian of the permitholder or, with the permission of the permitholder's parent or legal guardian, a licensed driver 18 years of age or older. Each occupant of a motor vehicle driven by a permitholder who is under 18 years of age shall wear a properly adjusted and fastened seatbelt or, if 61-9-420 applies, must be properly restrained in a child safety restraint.*

(c) *A person holding an instruction permit for a motorcycle may drive a motorcycle upon a public highway if the person is not carrying a passenger, has immediate possession of the permit, and is under the immediate and proximate visual supervision of one of the following persons, who must be at least 18 years of age if the permitholder is under 18 years of age:*

(i) *a motorcycle-endorsed licensed driver who is riding with the permitholder and who is operating a separate motorcycle or other motor vehicle; or*

(ii) *a licensed driver who is operating a separate motor vehicle if the permitholder has successfully completed a motorcycle safety training course through a cooperative driver testing program certified under 61-5-110.*

(2) The department may issue a traffic education learner license, *which is valid for 1 year from the date of issuance*, to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction *and that is available to all who meet the age requirements specified in 20-7-503 and reside within the geographical boundaries of or attend a school in the school district that offers the course.* A traffic education learner license entitles the licensee to operate a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an

applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit, as provided in 61-5-120."

Section 7. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to

determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

- (i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

- (ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

- (iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) ~~Whenever~~ *When* the department issues ~~an original~~ *a driver's* license to a person under the age of 18 years of age, the license must be designated and clearly marked as a "provisional license" *with a notation that conveys the restrictions imposed under [section 3].* ~~Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.~~

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [sections 1 through 5].

Section 9. Effective date. [This act] is effective July 1, 2006.

Section 10. Applicability. [This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006.

Approved April 20, 2005

CHAPTER NO. 298

[SB 116]

AN ACT REVISING LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; CREATING DEFINITIONS OF "MINOR SUBDIVISION" AND "PUBLIC UTILITY"; REQUIRING LOCAL SUBDIVISION REGULATIONS TO LIST MATERIALS REQUIRED IN A SUBDIVISION APPLICATION; REQUIRING THE REGULATIONS TO ADDRESS MULTIPLE HEARINGS; REQUIRING THE REGULATIONS TO ESTABLISH EVASION CRITERIA AND PROVIDE FOR AN APPEALS PROCESS; REQUIRING THE REGULATIONS TO ESTABLISH A PREAPPLICATION PROCESS; ESTABLISHING A COMPLETENESS REVIEW FOR THE APPLICATION AND REVIEW FOR SUFFICIENCY OF INFORMATION AND

PROVIDING DEADLINES FOR THOSE REVIEWS; PROVIDING A PROCEDURE FOR MULTIPLE HEARINGS WHEN NEW INFORMATION IS PRESENTED TO A GOVERNING BODY; REVISING THE REVIEW PROCEDURE FOR FIRST AND SUBSEQUENT MINOR SUBDIVISIONS FROM A TRACT OF RECORD, ALLOWING FOR EXPEDITED REVIEW OF MINOR SUBDIVISIONS, AND ALLOWING A GOVERNING BODY TO ADOPT REGULATIONS SPECIFIC TO MINOR SUBDIVISIONS; REQUIRING THAT ANY DECISION BY A GOVERNING BODY ON A PROPOSED SUBDIVISION BE ACCOMPANIED BY INFORMATION ON THE APPEALS PROCESS, THE RELEVANT REGULATIONS AND STATUTES, DATA THE GOVERNING BODY USED TO MAKE ITS DECISION, AND CONDITIONS THAT APPLY IF APPROVAL IS CONDITIONAL; AMENDING SECTIONS 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-625, AND 76-4-127, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-103, MCA, is amended to read:

“76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) “Certificate of survey” means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) “Cluster development” means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) “Dedication” means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) “Division of land” means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) “Examining land surveyor” means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) “Final plat” means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) “Governing body” means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) ~~"Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.~~ "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) ~~"Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana. "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.~~

(14) ~~"Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.~~

(15)(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(16)(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(17)(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(17)(b)(i)~~ (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 2. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. ~~(1) Before July 1, 1974, the~~ The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas; ~~for~~
- (2) the coordination of roads within subdivided land with other roads, both existing and planned; ~~for~~
- (3) the dedication of land for roadways and for public utility easements; ~~for~~
- (4) the improvement of roads; ~~for~~
- (5) the provision of adequate open spaces for travel, light, air, and recreation; ~~for~~
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, ~~for~~ the regulation of sanitary facilities; ~~for~~
- (8) the avoidance or minimization of congestion; and ~~for~~
- (9) the avoidance of ~~subdivision which subdivisions that~~ subdivisions that would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or ~~that~~ would necessitate an excessive expenditure of public funds for the supply of ~~such the~~ services.

~~(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."~~

Section 3. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) *list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);*
- (b) except as provided in 76-3-210, 76-3-509, or 76-3-609~~(2)~~, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;
- ~~(b)(c)~~ establish procedures consistent with this chapter for the submission and review of subdivision ~~plats~~ *applications and amended applications;*

~~(e)~~(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

~~(d)~~(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(e)~~(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

~~(f)~~(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a minimum~~, meet the regulations adopted by the department of environmental quality under 76-4-104;

(iv) the location and installation of *public* utilities;

~~(g)~~(h) provide procedures for the administration of the park and open-space requirements of this chapter;

~~(h)~~(i) provide for the review of ~~preliminary plats~~ *subdivision applications* by affected public utilities and those agencies of local, state, and federal government *identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those* having a substantial interest in a proposed subdivision. A *public* utility or agency review may not delay the governing body's action on the ~~plat~~ *application* beyond the time limits specified in this chapter, and the failure of any agency to complete a review of ~~a plat~~ *an application* may not be a basis for rejection of the ~~plat~~ *application* by the governing body.

~~(i)~~(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

~~(k)~~(i) except as provided in ~~this~~ subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width; to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection ~~(1)(j)~~(1)(k) is not required if:

~~(i)(A)~~ the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

~~(i)(B)~~ the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

~~(k)(l)~~ require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

~~(k)(m)~~ require the subdivider to describe, dimension, and show *public* utility easements in the subdivision on the final plat in their true and correct location. The *public* utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of *public* utility facilities for the provision of *public* utility services within the subdivision.

(n) *establish whether the governing body, its authorized agent or agency, or both will hold public hearings;*

(o) *establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and [section 9].*

(p) *establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.*

(q) *establish a preapplication process that:*

(i) *allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;*

(ii) *requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;*

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) *The governing body may establish deadlines for submittal of subdivision applications.*

Section 4. Section 76-3-601, MCA, is amended to read:

“76-3-601. Submission of application and preliminary plat for review. (1) ~~Except when a plat is eligible for summary review pursuant to 76-3-505, the~~ Subject to the submittal deadlines established as provided in 76-3-504(3), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide ~~an informational copy~~ a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.”

Section 5. Section 76-3-602, MCA, is amended to read:

“76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision ~~plats~~ *applications.*”

Section 6. Section 76-3-603, MCA, is amended to read:

“76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the ~~preliminary plat subdivision application~~ and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.”

Section 7. Section 76-3-604, MCA, is amended to read:

“76-3-604. Review of ~~preliminary plat subdivision application~~ — review for required elements and sufficiency of information. (1) ~~(a) The governing body or its designated agent or Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider’s written permission, the subdivider’s agent of the reviewing agent’s or agency’s determination.~~

(b) *If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.*

(2) *(a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider’s agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed*

subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

~~(2)(4) The~~ *After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or disapprove deny the preliminary plat proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, of its presentation unless:*

(a) the subdivider consents and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in [section 9].

~~(3)(5) If the governing body disapproves denies or conditionally approves the preliminary plat proposed subdivision, it shall forward one copy of the plat to send the subdivider accompanied by a letter, over with the appropriate signature, stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat that complies with the provisions of 76-3-620.~~

(6) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 8. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat subdivision application. (1) Except as provided in ~~76-3-505~~ 76-3-609 and subject to the regulations adopted pursuant to 76-3-504(1)(o) and [section 9], the governing body or its authorized agent or agency shall hold a at least one public hearing on the preliminary plat subdivision application must be held by the governing body, its authorized agent

or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the ~~plat subdivision application~~ should be approved, conditionally approved, or ~~disapproved~~ denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the ~~preliminary plat subdivision application~~ and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record *whose property is immediately adjoining the land included in the preliminary plat*, and each purchaser under contract for deed of property immediately adjoining the land included in the *preliminary* plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or ~~disapproval~~ denial of the ~~plat proposed subdivision~~. This recommendation must be submitted to the governing body in writing not later than 10 *working* days after the public hearing."

Section 9. Subsequent hearings — consideration of new information — requirements for regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the

60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

Section 10. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or ~~disapprove~~ *deny* a *proposed* subdivision is whether the *subdivision application*, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the *proposed* subdivision meets the requirements of this chapter. A governing body may not deny approval of a *proposed* subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ (6) of this section or except as provided in ~~76-3-505 and 76-3-509 or in 76-3-609(2) or (4)~~, the ~~effect impact~~ on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the *proposed* subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the *proposed* subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a *proposed* subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the ~~plat~~ *subdivision*.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.~~

~~(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.~~

(7)(6) The governing body may exempt *proposed* subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the ~~effect~~ *impact* of ~~subdivision~~ *development* on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.”

Section 11. Section 76-3-609, MCA, is amended to read:

“76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. ~~Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which there is not any land to be dedicated to the public for parks or playgrounds are to be reviewed as follows: (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.~~

~~(1)(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:~~

(a) ~~The~~ *Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or disapprove deny the first minor subdivision from a tract of record within 35 working days of the submission of the application a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).*

(b) *The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.*

(c) *Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).*

~~(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.~~

~~(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.~~

~~(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section~~

(d) *The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):*

(i) *the requirement to prepare an environmental assessment;*

(ii) *the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and*

(iii) *the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).*

(e) *The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:*

(i) *76-3-608(3); and*

(ii) *the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.*

(3) *Except as provided in subsection (4), any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.*

(4) *The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.*

(5) (a) *Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).*

(b) *If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."*

Section 12. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving ~~a~~ *an application and preliminary*

plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval ~~shall~~ *must* be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the *application and* preliminary plat ~~is~~ *are* approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval ~~providing said~~ *if the* approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 13. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, ~~a governing body may not deny or condition a subdivision approval under this part unless it provides a following~~ *any decision by the governing body* ~~written statement to deny or conditionally approve a proposed subdivision, the governing body shall prepare a written statement that must be provided to the applicant, that must be made available to the public, and to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:~~

- ~~(1) the reason for the denial or condition imposition;~~
- ~~(2) the evidence that justifies the denial or condition imposition; and~~
- ~~(3) information regarding the appeal process for the denial or condition imposition; that:~~

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 14. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or ~~disapprove~~ *deny a proposed an application and* preliminary plat *for a proposed subdivision or a* final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 15. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, within 20 days after ~~preliminary plat~~ approval of the application and preliminary plat under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat *included with the application for the proposed subdivision* or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Section 16. Repealer. Section 76-3-505, MCA, is repealed.

Section 17. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 9].

Section 18. Effective date. [This act] is effective on passage and approval.

Section 19. Applicability. (1) [This act] applies to subdivision applications submitted on or after [the effective date of this act].

(2) [Section 3], amending 76-3-504 and concerning adoption of regulations, and references to that section apply upon adoption of regulations under that section or on October 1, 2006, whichever occurs first.

Approved April 19, 2005

CHAPTER NO. 299

[SB 185]

AN ACT AUTHORIZING COUNTIES, CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS TO IMPOSE IMPACT FEES UPON NEW DEVELOPMENT TO FUND ALL OR A PORTION OF THE PUBLIC FACILITY CAPITAL IMPROVEMENTS AFFECTED BY THE NEW DEVELOPMENT; PROVIDING DEFINITIONS; PROVIDING A METHOD FOR CALCULATING, IMPOSING, AND COLLECTING IMPACT FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) (a) “Capital improvements” means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) “Connection charge” means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) “Development” means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) “Governmental entity” means a county, city, town, or consolidated government.

(5) (a) “Impact fee” means any charge imposed upon development by a governmental entity as part of the development approval process to fund the

additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in [section 2].

(7) "Public facilities" means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in [section 2] that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government.

Section 2. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve documentation that:

(a) describes existing conditions of the facility;

(b) establishes level of service standards;

(c) forecasts future additional needs for service for a defined period of time;

(d) identifies capital improvements necessary to meet future needs for service;

(e) identifies those capital improvements needed for continued operation and maintenance of the facility;

(f) makes a determination whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) makes a determination whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) has a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(2) The data sources and methodology supporting adoption and calculation of an impact fee must be available to the public upon request.

(3) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(4) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (1).

(5) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

Section 3. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with [sections 1 through 4]. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with [section 2], any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in [sections 1 through 4] must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to [section 2] in a manner that demonstrates the need for the excess capacity. [Sections 1 through 4] do not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to [section 2];

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in units that increase service demand as described in [section 2 (1)(j)]. If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) [Sections 1 through 4] do not prevent a governmental entity from granting refunds or credits:

(i) that it considers appropriate and that are consistent with the provisions of [section 2] and this chapter; or

(ii) in accordance with a voluntary agreement, consistent with the provisions of [section 2] and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

Section 4. Impact fee advisory committee. (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

Section 5. Transition. A general powers local government that is imposing impact fees adopted on or before [the effective date of this act] shall bring those fees into compliance with [this act] by October 1, 2006.

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 4].

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. (1) [This act] applies only to the portion of an impact fee ordinance or resolution enacted or amended by a self-governing local government on or after [the effective date of this act].

(2) Except when an impact fee ordinance or resolution is amended as provided in subsection (1), nothing in [this act] may be construed to affect any portion of an ordinance or resolution enacted prior to [the effective date of this act].

Approved April 19, 2005

CHAPTER NO. 300

[SB 255]

AN ACT CREATING THE AIRPORT COMPATIBILITY ACT; DEFINING "AIRPORT AFFECTED AREA"; REQUIRING A GOVERNING BODY TO DESIGNATE AN AIRPORT AFFECTED AREA FOR CERTAIN AIRPORTS AND REQUIRING REGULATIONS TO BE CONCURRENTLY ADOPTED; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE AIRPORT AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF AN AIRPORT AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; ESTABLISHING CERTAIN MINIMUM REQUIREMENTS FOR AIRPORT AFFECTED AREA REGULATIONS AND ESTABLISHING A PROCEDURE FOR DEVELOPING OR AMENDING THE REGULATIONS; PROVIDING FOR PRIOR NONCONFORMING USES IN AN AIRPORT AFFECTED AREA; PROVIDING FOR ACQUISITION OF PROPERTY UNDER CERTAIN CIRCUMSTANCES; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; PROVIDING PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT OR REGULATIONS; AMENDING SECTIONS 7-14-4801, 67-1-101, 67-10-102, 67-10-202, 67-10-231, 67-10-402, 67-10-902, 67-11-103, 67-11-201, 67-11-241, AND 70-30-102, MCA; REPEALING SECTIONS 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, AND 67-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4801, MCA, is amended to read:

"7-14-4801. Acquisition of landing fields and parking areas lots or lands for aircraft. A city or town council may acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for landing fields or parking areas for of aircraft, within or outside of the corporate limits of the municipality. The city or town council may exercise municipal jurisdiction over the lots or lands acquired pursuant to this section, even though the lots or lands or any portion of the lots or lands is outside of the corporate limits of the municipality."

Section 2. Section 67-1-101, MCA, is amended to read:

"67-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) (a) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling the facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors.

(b) ~~The term~~ *The term* does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Aircrew" includes:

(a) an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way;

(b) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances except for an individual employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual; and

(c) an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(6) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, ~~except a restricted landing area,~~ that is *intended or* designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) ~~"Airport and landing field" means any area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana.~~

~~(14)~~(10) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality that has determined to exercise the powers of a municipal airport authority under 67-11-102.

~~(12)~~(11) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

~~(13)~~ "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

~~(14)~~(12) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing areas.

~~(15)~~(13) (a) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the public that the person gives or offers to give that instruction.

(b) ~~It~~ *The term* does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

~~(16)~~(14) "Board" means the board of aeronautics provided for in 2-15-2506.

~~(17)~~(15) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

~~(18)~~(16) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the *airport affected area described in 67-5-201 hereof as safety zones designated pursuant to [section 6]*, including any edifice, structure, or construction or object within the restricted zones erected, constructed, placed, or located on or over land or water, or both.

~~(19)~~(17) "Civil aircraft" means an aircraft other than a public aircraft.

~~(20)~~(18) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

~~(21)~~(19) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

~~(22)~~ "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, is the metes and bounds and elevations along the respective sides of the airport or landing field as determined by the United States government, the state of Montana, a county, a municipality, or any other public authority owning, leasing, controlling, operating, or maintaining the airport or landing field. The determination and definition must be evidenced by a plat showing the metes and bounds and elevations that must be filed in the records of the public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

~~(23)~~(20) "Flying club" means a person other than an individual that, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

~~(24)~~(21) "Governing body" means, *except as provided in [section 5]*, a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county.

~~(25)~~(22) "Height of buildings and structures" means, for the purposes of ~~chapter 5 [sections 3 through 19]~~, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the building or structure to the level of the highest point of the building or structure.

~~(26)~~(23) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

~~(27)~~(24) "Municipality" or ~~"political subdivision"~~ means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

~~(28)~~(25) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(26) "NPIAS airport" means an airport that is included in the federal aviation administration's national plan of integrated airport systems.

~~(29)~~(27) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, (in the capacity of owner, lessee, or otherwise), of the aircraft, operates the aircraft.

~~(30)~~(28) "Person" means an individual, firm, partnership, *private, municipal, or public* corporation (~~private, municipal, or public~~), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(29) "Political subdivision" has the same meaning as municipality.

~~(31)~~(30) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

~~(32)~~(31) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

~~(33)~~(32) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

~~(34)~~(33) "Restricted landing area" means an area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as provided by the department.

~~(35)~~(34) “State airway” means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

~~(36)~~(35) “Structure” means any object constructed or installed by a person, including but not limited to buildings, towers, smokestacks, and overhead transmission lines.

~~(37)~~(36) “Tree” means any object of natural growth.

(37) “YDNL” means the 365-day average, in decibels, day-night average sound level as provided in 14 CFR 150.7.”

Section 3. Short title. [Sections 3 through 19] may be cited as the “Airport Compatibility Act”.

Section 4. Legislative finding and purpose. The legislature finds that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. The legislature also finds that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is the purpose of [sections 3 through 19] to promote the public health, safety, and general welfare by the delineation of an airport affected area and by the development of compatible noise, height, and land use regulations to control airport hazards. The prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and in which political subdivisions may acquire land or property interests.

Section 5. Definitions. (1) Except as provided in subsection (2)(b), the definitions in 67-1-101 apply to [sections 3 through 19].

(2) In [sections 3 through 19], the following definitions also apply:

(a) “Airport affected area” means the land and space above the ground surface of an airport in the proximity of the airport, the use of which may be affected by the airport’s existence, including the areas described in 14 CFR, part 77.

(b) “Governing body” means a city commission, town council, county commission, or the commissioners of a municipal or regional airport authority.

Section 6. Designation of airport affected area — regulations required — maps and descriptions required — public hearing required — effect of designation. (1) Subject to the provisions of subsection (5), a governing body of a political subdivision that owns or controls an NPIAS airport or that has an airport affected area for an NPIAS airport within its territorial limits or a joint board established pursuant to [section 7] shall, by ordinance or resolution, exercising its police power:

(a) designate an airport affected area within 1 year of [the effective date of this act];

(b) concurrently adopt regulations for the airport affected area that comply with [section 8]; and

(c) administer and enforce the regulations that are adopted.

(2) A governing body of a political subdivision that owns or controls a non-NPIAS airport or that has an airport affected area for a non-NPIAS airport within its territorial limits or a joint board established pursuant to [section 7] may, by ordinance or resolution, exercising its police power, designate an airport affected area. If the governing body or joint board makes the designation, it shall concurrently adopt regulations for the airport affected area that may comply with [section 8] and shall administer and enforce the regulations.

(3) The airport affected area may not be less than 10,000 feet from the thresholds of each runway or less than 1 mile wide on each side of each runway unless evaluations for a specific runway show that the accident data justifies a lesser area. A greater area may be regulated as an airport affected area if:

(a) studies have been conducted in accordance with 14 CFR, part 150, maps of the area have been prepared, and a program has been approved by the federal aviation administration; or

(b) the governing body intends to protect imaginary surfaces as provided in 14 CFR, part 77.

(4) The designation must be accompanied by maps and legal descriptions of the airport affected area. The maps must be filed with the clerk and recorder of each affected county and with the clerk of each affected city or town.

(5) (a) Before a governing body designates an airport affected area and adopts or amends regulations governing the airport affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, town council, or the commissioners of a municipal airport authority.

(6) After the designation of an airport affected area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.

Section 7. Joint airport affected area regulation board authorized — may adopt regulations. (1) If an airport affected area is located outside of the jurisdictional area of the governing body of the political subdivision that owns or controls the airport, the governing body of the political subdivision that owns or controls the airport and the governing body of the political subdivision within which the airport affected area is located may by ordinance or resolution create a joint airport affected area regulation board.

(2) The joint board may adopt, administer, and enforce airport affected area regulations, as provided in [section 6], subject to the provisions of [section 8].

(3) The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The members of the joint board who are appointed shall select an additional at-large member who resides in the county in which the airport is located.

(4) If, in the judgment of the governing body of the political subdivision that owns or controls an airport, the governing body of the political subdivision that contains the airport affected area has failed to adopt or enforce reasonably

adequate airport affected area regulations for the airport affected area and if the governing body of the political subdivision that contains the airport affected area has refused to join in creating a joint board under this section, the governing body of the political subdivision that owns or controls the airport may adopt, administer, and enforce airport affected area regulations for the airport affected area. The regulations adopted by the governing body of the political subdivision that owns or controls the airport prevail if a conflict arises between regulations adopted by that governing body and the governing body of the political subdivision that contains the airport affected area.

Section 8. Airport affected area regulations — contents. (1) Subject to the provisions of [section 11], regulations adopted for the airport affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and, for an NPIAS airport, at a minimum, give consideration to:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the nature of the terrain;

(d) the future development of the airport; and

(e) federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations.

(2) Airport affected area regulations may:

(a) designate the airport or airports that are subject to the regulations, with a description of existing and future runways and approaches;

(b) define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR, part 77;

(c) describe the airport affected area by referencing maps and describing existing airport hazards and natural terrain that intrude into the airport affected area;

(d) designate and describe zones within the airport affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs, as well as the notice requirements and obstructions standards provided in 14 CFR, part 77;

(e) show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be considered by anyone who builds within the airport affected area;

(f) specify permitted and conditional uses within each zone of the airport affected area by addressing:

(i) incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other concentrations of people indoors or outdoors;

(ii) the land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part 150;

(iii) bird attractants such as solid waste disposal sites and lagoons;

(iv) sources of electromagnetic radiation that may interfere with electronic navigational aids;

(v) lights other than navigational aids that glare upward or shine on or in the direction of the airport; and

(vi) the national transportation safety board's accident investigation data in the vicinity of airports and specific accident data for a particular airport, if that information is available;

(g) define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the expiration of the uses in accordance with [sections 3 through 19];

(h) provide for an inventory of existing land uses, structures, and trees within the airport affected area;

(i) expand on the permit system provided pursuant to [section 14] for changes to existing land uses, including changes that affect structures or trees, and for new land uses, structures, or trees;

(j) subject to the provisions of [section 17], provide a variance procedure from the literal application of the regulations, including the conditions for granting a variance; and

(k) establish or designate local boards, commissions, or agents to administer and adjudicate interpretations of the regulations.

Section 9. State lands. When an airport affected area lies partially or entirely on state-owned lands, the department of natural resources and conservation shall administer the affected lands in conformance with the airport affected area regulations adopted by the local governing body.

Section 10. Procedure for developing or amending regulations — assistance from existing boards or zoning commissions. (1) In adopting, amending, and repealing airport affected area regulations under [sections 3 through 19], a governing body or a joint airport affected area regulation board may request the assistance of existing planning boards or zoning commissions.

(2) If a political subdivision does not have an existing planning board or zoning commission to assist with recommendations for airport affected area regulations, the governing body may:

(a) request that an existing airport board recommend the boundaries of the airport affected area and the various zones to be established and the regulations that will govern the airport affected area; or

(b) act without assistance of an airport board, planning board, or zoning commission.

(3) If a governing body or joint airport affected area regulation board uses a separate airport board, planning board, or zoning commission to assist the governing body or joint board in designating the airport affected area and establishing regulations to govern the airport affected area, the airport board, planning board, or zoning commission shall make a preliminary report and hold public hearings on the report before submitting its final report to the governing body or joint board. The governing body or joint board may not hold a public hearing or take action on the regulations until it has received the final report from the airport board, planning board, or zoning commission.

Section 11. Prior nonconforming uses. (1) All regulations adopted under [sections 3 through 19] must be reasonable and may not require the removal or alteration of any structure or tree or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those

structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. For the purposes of this section, "substantial damage" has occurred when 80% or more of a structure or tree is deteriorated or decayed or has been torn down or destroyed.

(2) The regulations may require that trees in place at the time that the regulations take effect be maintained by the political subdivision, at its expense, at heights attained at that time.

(3) The regulations may require the owner of structures or trees to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(4) Land in existing residential subdivisions or platted for residential subdivision at the time that regulations are adopted may continue to be used for residential purposes, subject to notification provided to property owners that the lots are within an adopted airport affected area.

Section 12. Acquisition of property rights when regulations not sufficient. The political subdivision within which a property or nonconforming use is located or the political subdivision owning the airport or served by the airport may acquire, by purchase, grant, or condemnation pursuant to Title 70, chapter 30, an air right, aviation easement, or other estate or interest in the property or nonconforming structure or use that is necessary to effectuate the purposes of [sections 3 through 19]. The governing body of the political subdivision may acquire an interest when:

(1) it is desirable to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the necessary approach protection cannot, because of constitutional limitations, be provided by airport affected area regulations under [sections 3 through 19]; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport affected area regulations.

Section 13. Regulations relative to zoning ordinances. (1) Subject to the provisions of subsections (2) and (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 3 through 19] may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) The zoning ordinance or resolution may not limit the effectiveness or scope of the regulations adopted pursuant to [sections 3 through 19].

(3) When a conflict exists between the regulations adopted pursuant to [sections 3 through 19] and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

Section 14. Permit system. (1) The regulations adopted pursuant to [sections 3 through 19] must provide for a permit system for erecting new structures or trees, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures or replacing existing trees within the airport affected area.

(2) A permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport affected area and the regulations adopted to protect the airport affected area.

(3) A permit granted pursuant to [sections 3 through 19] may require the owner of a structure or tree to allow the governing body, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

Section 15. Enforcement. The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to [sections 3 through 19]. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

Section 16. Appeals. (1) The governing body that designated the airport affected area shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or an airport appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or an airport appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the airport appeals board, in which case the terms of the members for the purposes of [sections 3 through 19] are concurrent with their terms as members of the board of adjustment.

Section 17. Variance. (1) A person intending to erect or increase the height of a structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to [sections 3 through 19] may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the airport appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure or tree to allow the political subdivision, at the owner's expense, to

install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(6) A person who builds a structure pursuant to a variance from the airport affected area regulations or who takes or buys property in an airport affected area for which a variance has been granted is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal airport operations.

Section 18. Penalty. A person who violates the provisions of [sections 3 through 19] or the regulations adopted under [section 8] is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104.

Section 19. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 3 through 19] or the regulations adopted pursuant to [sections 3 through 19].

Section 20. Section 67-10-102, MCA, is amended to read:

“67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns may, either individually or by the joint action of a county and one or more of the cities and towns within the county, acquire by gift, deed, purchase, or condemnation pursuant to Title 70, chapter 30, land for airport or landing field purposes. The local governments may use the land to establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft.

(2) In addition, a county, city, or town may exercise the authority granted by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or with any combination of counties, cities, or towns. A multijurisdictional airport is not required to be located, in whole or in part, within the limits of each subdivision participating in the joint venture.”

Section 21. Section 67-10-202, MCA, is amended to read:

“67-10-202. Creation of board — funding — rules. (1) The county, city, or town, acting individually or acting jointly as authorized by 67-10-102, having established an airport or landing field and acquired property for such that purpose, may construct, improve, equip, maintain, and operate the same and for that purpose airport. ~~The county, city, or town may create a board or body from the inhabitants residents of such the county, city, or town, or such joint subdivisions subdivision of the state for the purpose of conferring upon them, and may confer upon them, the board or body the jurisdiction for the improvement, equipment, maintenance, and operation of such the airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such the airport or landing field or may authorize such the board or body to do so, subject, however, to the approval of the appointing power before the same shall~~

fees or charges may take effect. All expenses of ~~such the~~ construction, improvement, equipment, maintenance, and operation ~~shall be~~ are a charge against ~~such the~~ county, city, or town.; ~~or when~~ When a county, city, or town acts jointly under the authority herein given provided in this section, ~~such the~~ charges ~~shall be~~ are against the joint ~~subdivisions~~ subdivision of the state and ~~shall must~~ be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

(2) For the purpose of ~~meeting the charges mentioned complying with subsection (1),~~ when the airport ~~or landing field~~ is ~~such a~~ joint venture, a joint fund ~~shall must~~ be created and maintained into which each of the political subdivisions ~~interested in the joint venture~~ shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council or councils affected.

(3) All disbursements from ~~such the~~ fund ~~shall must~~ be made by order of ~~such the~~ joint board or body, if one ~~be is~~ created as authorized, otherwise under ~~such the~~ rules ~~as that~~ the joint control by the commissioners and council or councils may adopt.”

Section 22. Section 67-10-231, MCA, is amended to read:

“67-10-231. No limitation on airport hazard zoning. Nothing contained in this chapter ~~shall be construed to limit~~ *limits* any right, power, or authority of a municipality to regulate airport hazards by zoning ~~or by establishing airport affected area regulations as provided in [sections 3 through 19].”~~

Section 23. Section 67-10-402, MCA, is amended to read:

“67-10-402. Tax levy. (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, ~~landing fields,~~ and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose mill levy authorized by 7-6-4451, a tax on the taxable value of all taxable property in the county, city, or town for airports and ~~landing fields and for~~ ports.

(2) In the event of a jointly established airport, ~~landing field,~~ or port, the county commissioners and the city or town council or councils involved shall determine in advance the levy necessary for those purposes and the proportion that each political subdivision joining in the venture is required to pay.

(3) If the levy is insufficient for the purposes enumerated in subsection (1), the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods periodically is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. ~~Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety.~~

Section 24. Section 67-10-902, MCA, is amended to read:

“67-10-902. Definitions. As used in this part, the following definitions apply:

(1) “Airport” means an airport ~~and landing field~~, as defined in 67-1-101, that does not have commercial automobile rental services available. The term includes a regional airport authority or municipal airport authority as defined in 67-1-101.

(2) “Courtesy car” means a motor vehicle provided by, and titled in the name of, a municipality for the purposes and pursuant to the conditions set out in this part.

(3) (a) “User” means an airplane pilot or an airplane passenger who flies into an airport.

(b) The term does not include local residents or airport personnel.”

Section 25. Section 67-11-103, MCA, is amended to read:

“67-11-103. Regional airport authority. (1) Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a regional airport authority ~~shall~~ *must* create a board of not less than five commissioners; the number to be appointed, their term and compensation, if any, ~~shall~~ *must* be provided for in the resolution. Each ~~such~~ regional airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure ~~not inconsistent~~ *consistent* with 67-11-104.

(2) A regional airport authority may be increased ~~from time to time~~ to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting ~~thereto; provided that if to the increase.~~ *thereto.* If a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority ~~must~~ *shall* consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority ~~shall~~ *must* be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A municipality ~~shall~~ *may* not adopt any resolution authorized by this section without a public hearing ~~thereon on the resolution~~. Notice ~~thereof shall of the hearing must~~ be given at least 10 days prior ~~thereto to the hearing~~ in a newspaper published in the municipality or, if there is no newspaper published ~~therein in the municipality~~, ~~then~~ in a newspaper having general circulation in the municipality.

(5) For the purpose of this chapter, a regional airport authority ~~shall have~~ *has* the same powers as all other political subdivisions in the adoption and enforcement of ~~comprehensive~~ airport ~~zoning~~ *affected area* regulations as provided for ~~by the laws of this state in this title~~.

Section 26. Section 67-11-201, MCA, is amended to read:

“67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes. Authority powers include but are not limited to the power to:

- (1) sue and be sued, have a seal, and have perpetual succession;
- (2) execute contracts and other instruments and take other action that may be necessary or convenient to carry out the purposes of this chapter;
- (3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.
- (4) establish ~~comprehensive~~ airport ~~zoning~~ *affected area* regulations in accordance with ~~the laws of this state~~ *this title*;
- (5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities. However, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or a public agency of this or any other state without the consent of the authority, municipality, or public agency.
- (6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport.”

Section 27. Section 67-11-241, MCA, is amended to read:

“67-11-241. No limitation on airport hazard zoning. Nothing contained in this chapter ~~shall be construed to limit~~ *limits* any right, power, or authority of

a municipality to regulate airport hazards by zoning *or by establishing airport affected area regulations as provided in [sections 3 through 19].*"

Section 28. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport ~~and landing field~~ purposes as provided in 7-14-4801, 67-2-301, ~~67-5-202, 67-6-301, [section 12],~~ and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.”

Section 29. Repealer. Sections 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, and 67-6-301, MCA, are repealed.

Section 30. Codification instruction. [Sections 3 through 19] are intended to be codified as an integral part of Title 67, and the provisions of Title 67 apply to [sections 3 through 19].

Section 31. Effective date. [This act] is effective on passage and approval.

Section 32. Applicability. (1) Except as provided in subsection (2), [sections 3 through 19] do not apply to a governing body that had expended funds to begin the process of designating or had already designated an airport influence area or that had established a zoning district and airport zoning regulations on or before [the effective date of this act]. The provisions of Title 67, chapters 4, 5, and 6 apply to the governing body as those provisions read before [the effective date of this act].

(2) If a governing body alters an airport influence area established before [the effective date of this act] or amends the regulations for the airport influence area or any adopted airport zoning regulations, then the provisions of [sections 3 through 19] apply.

Approved April 19, 2005

CHAPTER NO. 301

[SB 274]

AN ACT REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT TO REVOKE AN EXEMPTION FOR MORTGAGE BANKERS ACTING AS MORTGAGE BROKERS; EXPANDING CERTAIN EXEMPTIONS; REQUIRING CERTAIN MORTGAGE BANKERS TO BE LICENSED AS MORTGAGE BROKERS; INCLUDING MORTGAGE BANKER EXPERIENCE AS QUALIFYING EXPERIENCE FOR A MORTGAGE BROKER LICENSE; AND AMENDING SECTIONS 32-9-102, 32-9-104, AND 32-9-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-102, MCA, is amended to read:

“32-9-102. License requirement. (1) A person or entity may not act as a residential mortgage broker or loan originator ~~after September 1, 2004~~, unless licensed under the provisions of this part.

(2) *A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker.”*

Section 2. Section 32-9-104, MCA, is amended to read:

“32-9-104. Exemptions. The provisions of this part do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners’ Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(b) *any employee of an entity listed in subsection (2)(a); or*

(c) *any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:*

(i) *the department;*

(ii) *the federal deposit insurance corporation;*

(iii) *the federal reserve system;*

(iv) *the national credit union administration; or*

(v) *the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;*

(3) a person or entity engaged solely in commercial mortgage lending; or

(4) a political subdivision or governmental entity of the United States or any state of the United States; ~~or~~

~~(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker for more than four mortgage loans in a calendar year must be licensed as a mortgage broker with respect to those mortgage broker services.”~~

Section 3. Section 32-9-109, MCA, is amended to read:

“32-9-109. Experience requirements. (1) Except as provided in 32-9-111:

(a) an individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator, *as a mortgage banker*, or in a related field; and

(b) an individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field.”

Approved April 20, 2005

CHAPTER NO. 302

[SB 290]

AN ACT REQUIRING CERTAIN WATER AND SANITATION INFORMATION TO BE SUBMITTED WITH A PRELIMINARY PLAT FOR LOCAL SUBDIVISION REVIEW; REQUIRING THE INFORMATION TO CONFORM WITH RULES AND STANDARDS ADOPTED AND PUBLISHED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; PROHIBITING A GOVERNING BODY FROM REQUIRING ADDITIONAL WATER AND SANITATION INFORMATION UNLESS CERTAIN PROCEDURES ARE FOLLOWED; REQUIRING A GOVERNING BODY TO COLLECT PUBLIC COMMENT ON THE WATER AND SANITATION INFORMATION AND REQUIRING THE SUBDIVIDER TO FORWARD THE INFORMATION AND PUBLIC COMMENT ON PROPOSED SUBDIVISIONS TO THE APPROPRIATE REVIEWING AUTHORITY; ALLOWING A GOVERNING BODY TO CONDITION APPROVAL ON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR ON CERTAIN WATER AND SANITATION INFORMATION BEING PROVIDED; PROHIBITING A GOVERNING BODY FROM CONDITIONALLY APPROVING OR DENYING A PROPOSED SUBDIVISION UNLESS THE DECISION IS BASED ON REGULATIONS THAT THE GOVERNING BODY IS AUTHORIZED TO ENFORCE; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, 76-3-608, 76-4-104, AND 76-4-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(f) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a minimum,~~ meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104; *for subdivisions that will create one or more parcels containing less than 20 acres; and*

(B) *standards provided in 76-3-604 and [section 4] for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and*

(iv) the location and installation of utilities;

(g) provide procedures for the administration of the park and open-space requirements of this chapter;

(h) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(j) except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection (1)(j) is not required if:

(i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(ii) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the

preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(k) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(l) require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.”

Section 2. Section 76-3-511, MCA, is amended to read:

“76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a ~~rule~~ *regulation* under 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a ~~rule~~ *regulation* to implement 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body’s conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a ~~rule~~ *regulation* of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the ~~rule~~ *regulation*. If the governing body determines that the ~~rule~~ *regulation* is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the ~~rule~~ *regulation* to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty

to comply with the challenged ~~rule~~ *regulation*. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a ~~rule~~ *regulation* review under subsection (4)(a) if the governing body adopts a ~~rule~~ *regulation* after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body ~~rule~~ *regulation*."

Section 3. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review — water and sanitation information required. (1) Except when a plat is eligible for summary review pursuant to 76-3-505, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements *and must be accompanied by the preliminary water and sanitation information required under [section 4]*.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 4. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

- (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
- (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;
 - (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;
 - (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - (i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;
 - (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);
 - (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
 - (i) obtained from well logs or testing of onsite or nearby wells;
 - (ii) obtained from information contained in published hydrogeological reports; or
 - (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;
 - (f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;
 - (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within

and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.

Section 5. Section 76-3-604, MCA, is amended to read:

“76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat.

(4) (a) *The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to [section 4] and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.*

(b) *The subdivider shall, as part of the subdivider’s application for sanitation approval, forward the comments or the summary provided by the governing body to the:*

(i) *reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and*

(ii) *local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.*

(5) (a) *For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.*

(b) *For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [section 4], that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.”*

Section 6. Section 76-3-608, MCA, is amended to read:

“76-3-608. Criteria for local government review. (1) The basis for the governing body’s decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental

assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (7) of this section or except as provided in 76-3-505 and 76-3-509, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.

(7) The governing body may exempt subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

- (i) addresses the criteria in subsection (3)(a);
 - (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);
 - (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and
 - (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and
- (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:
- (i) apply to the entire area subject to the exemption; and
 - (ii) address the criteria in subsection (3)(a), as described in the growth policy.

(8) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [section 4] or public comment received pursuant to 76-3-604 on the information provided pursuant to [section 4] only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 7. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater

systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(h);

(j) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat; and

(k) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 50 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 60 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(10) *The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under [section 4].*

Section 8. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, *any public comments or summaries of public comments collected as provided in 76-3-604(4)*, and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final

decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

- (a) the exclusions cited in 76-3-201 and 76-3-204;
 - (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;
 - (c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;
 - (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and
 - (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:
 - (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or
 - (ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.
- (3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 9. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 4].

Approved April 19, 2005

CHAPTER NO. 303

[SB 412]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ELEVATOR CONTRACTORS, ELEVATOR MECHANICS, AND ELEVATOR INSPECTORS; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE FOR A LIMITED MECHANIC'S LICENSE AND A LIMITED ELEVATOR CONTRACTOR'S LICENSE; PROVIDING FOR THE APPOINTMENT OF A LICENSED ELEVATOR MECHANIC TO THE BUILDING CODES COUNCIL;

REGULATING THE DESIGN, CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REPAIR, INSPECTION, INSTALLATION, AND TESTING OF ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER EQUIPMENT; AMENDING SECTION 50-60-115, MCA; REPEALING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 14], the following definitions apply:

(1) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(2) “Elevator contractor” means any person intending to engage in the business of installing, altering, or repairing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

(3) “Elevator inspector” means any person intending to engage in inspecting elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

(4) “Elevator mechanic” means any person intending to engage in installing, altering, repairing, or testing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

Section 2. Rulemaking — records. The department may adopt rules for the administration of [sections 1 through 14] and for the licensing and disciplining of elevator mechanics, elevator contractors, and elevator inspectors. The department shall adopt rules to provide for a limited mechanic’s license and a limited elevator contractor’s license.

Section 3. License required. (1) A person may not engage in the work of an elevator mechanic or elevator inspector or engage in the business of an elevator contractor unless the person has received a license from the department.

(2) A person who receives a license under the provisions of [sections 1 through 14] shall carry the license or proof of licensure at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the department and be made known to each licensee when a license is issued.

(3) The department shall establish license fees and license renewal fees that are commensurate with the costs of administering the licensing provisions of [sections 1 through 14].

Section 4. Apprenticeship allowed. [Sections 1 through 14] do not prohibit a person from working as an apprentice with an elevator mechanic licensed under [sections 1 through 14] and under rules adopted by the department. The name and residence of each apprentice and the name and residence of the apprentice’s employer must be filed with the department, and a record must be kept by the department showing the name and residence of each apprentice.

Section 5. Elevator mechanic’s license — limited mechanic’s license. (1) A person intending to work as an elevator mechanic shall file a license application with the department on forms furnished by the department.

(2) Except as provided in subsection (3), an applicant shall furnish proof, under oath, that the person:

(a) has successfully completed a state-approved apprenticeship or other education program that meets requirements established by the department by rule; or

(b) has at least 3 years of experience, verified by current and previous employers, working with equipment subject to the provisions of [sections 15 through 22] and has passed the examination provided for in [section 6].

(3) The department shall adopt rules for the licensure, without examination, of an applicant who can demonstrate that the applicant has worked continuously as an elevator mechanic for the 3 years prior to [the effective date of this section] and has the requisite experience for licensure. An applicant under this section shall pay the required application fee and shall submit any required proof under oath.

(4) The department shall issue an elevator mechanic's license to an applicant that meets the requirements of this section.

(5) (a) The department may issue a limited mechanic's license to an applicant that authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences.

(b) The examination for a limited mechanic's license must be based on the applicable codes for the equipment that a licensee is authorized to install.

(c) The department shall issue a limited mechanic's license to an applicant that meets the requirements of this subsection (5).

Section 6. Elevator mechanic's examination — fee — third parties — reciprocity. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of [section 5(2)(b)]. The department shall determine the subjects, scope, and acceptable level of performance for the examination.

(2) The department shall determine by rule the fees to be charged an applicant for each examination and reexamination that the department administers. The fees must be commensurate with costs.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with [section 5(2)(b)].

(4) The department may issue a license to an individual holding a valid license from another state that the department determines has standards substantially equal to [sections 1 through 14] upon application and without examination.

Section 7. Elevator inspector's license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

Section 8. Elevator contractor's license — limited elevator contractor's license. (1) A person intending to engage in business as an elevator contractor shall apply for a license as an elevator contractor on forms provided by the department.

(2) An applicant shall provide the department with the following:

(a) if the applicant is an individual or sole proprietor, the name, residential address, and business address of the applicant;

(b) if the applicant is a domestic business entity, the name and business address of the business entity and the name and residential address of the business entity's principal officer;

(c) if the applicant is a foreign business entity, the name and address of a state resident authorized to accept service of process or other notices on the business entity's behalf;

(d) evidence of insurance coverage required in [section 21]; and

(e) other information that the department may require.

(3) The department shall issue an elevator contractor's license to an applicant that meets the requirements of this section.

(4) The department may issue a limited elevator contractor's license to an applicant that limits a licensee to the business of installing, altering, and repairing elevators, platform lifts, stairway chairlifts, and dumbwaiters in private residences. The department shall issue a limited elevator contractor's license to an applicant that meets the requirements of this section.

Section 9. Temporary elevator mechanic's license. (1) (a) If, in the case of an emergency or disaster as defined in 10-3-103, the department determines that the number of licensed elevator mechanics is insufficient to cope with the emergency or disaster, the department shall contact the licensed elevator contractors operating in the state and request that the elevator contractors certify to the department any persons in their employ who have an acceptable combination of education and experience to perform elevator work without direct supervision.

(b) As soon as practicable, the department shall issue to a person certified pursuant to subsection (1)(a) a temporary elevator mechanic's license. The department may not charge a fee for a license issued under this section.

(c) The license may not be valid for more than 30 days. However, the department may renew the license for 30-day periods in the case of a continuing emergency or disaster.

(d) The department may limit a person's temporary license to certain equipment or to certain geographical areas.

(2) (a) An elevator contractor shall inform the department if there are not any licensed elevator mechanics available to perform elevator work on behalf of the elevator contractor.

(b) The elevator contractor may submit a list to the department of any persons that the elevator contractor certifies have an acceptable combination of documented education and experience to perform the work of an elevator mechanic without direct supervision.

(c) The department shall issue a temporary elevator mechanic's license to any person, certified by an elevator contractor, who applies for a license to the department on a form supplied by the department. The department may charge a fee for a temporary license issued under this subsection that is commensurate with the department's costs in administering this subsection (2).

(d) A temporary license issued under this subsection (2) is valid for a period of 30 days, and the department shall renew the license for additional 30-day periods as long as the shortage of licensed elevator mechanics exists and the

licensee is employed by the certifying elevator contractor. However, the department may refuse to renew a temporary license for any temporary licensee that the department determines has had an adequate opportunity to obtain a license under the provisions of [sections 5 and 6].

Section 10. License renewal — continuing education. (1) (a) All licenses issued under [sections 1 through 14] expire on a date set by department rule.

(b) A licensee may renew a license by filing an application with the department on a form provided by the department and by paying a renewal fee in an amount established by the department by rule.

(2) The department shall establish by rule continuing education requirements for persons licensed as elevator mechanics or elevator inspectors. The department may not require less than 8 hours of continuing education for each license term. The continuing education requirement must be met by the licensee taking all of the required hours of continuing education in the year prior to the expiration of the license. The rules must include requirements for instructor certification, course content, and recordkeeping.

(3) The department shall issue a renewal license to applicants who meet the requirements of this section.

Section 11. Reasonable fees — deposit of fees and fines. (1) All fees established by the department under [sections 1 through 14] must be commensurate with the respective program costs. Fees collected by the department under [sections 1 through 14] must be deposited in an account in the state special revenue fund for the use of the program.

(2) Fines collected under [sections 1 through 14] must be deposited in the state general fund.

Section 12. Proof of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a licensed elevator mechanic or licensed elevator inspector has the right to ask a person doing work at a job site that requires an elevator mechanic's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in [section 13], from a person at a job site where the person is performing elevator mechanic work if the person fails to display an elevator mechanic's license or proof of licensure at the request of the department inspector.

Section 13. Failure to display license. (1) A citation issued by an employee of the department for failure to display an elevator mechanic's license or proof of licensure must include:

- (a) the time and date on which the citation is issued;
- (b) the name, residential address, and signature of the person to whom the citation is issued;
- (c) reference to the statutory authority to issue the citation;
- (d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) \$100 for the first offense;

(b) \$250 for the second offense; and

(c) \$500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the department, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The department may waive or refund the fine upon finding that the person has demonstrated acceptable proof of licensure.

(5) A person who refuses to sign and accept a citation is subject to the civil penalty provided for in 37-1-318.

Section 14. Penalty. (1) Except as provided in subsection (4), a person or corporation knowingly violating any provision of [sections 1 through 14] shall upon conviction of a violation:

(a) if the violator is a person, be punished by a fine of not more than \$500, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and

(b) if the violator is a corporation, be punished by a fine of not more than \$1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who personally and knowingly participates in or is an accessory to any violation of [sections 1 through 14] by the partnership, association, or corporation is subject to the penalties prescribed for individuals.

(3) A violation of [sections 1 through 14] is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the department, prosecute any violation of the licensing requirements of [sections 1 through 14].

(4) A person who violates the provisions of [section 13] is not subject to an additional penalty under this section.

Section 15. Scope. (1) [Sections 15 through 22] cover the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the following equipment, associated parts, and hoistways:

(a) hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:

(i) elevators; and

(ii) platform lifts and stairway chair lifts;

(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:

- (i) escalators; and
- (ii) moving walks;

(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including but not limited to:

- (i) dumbwaiters; and
- (ii) material lifts and dumbwaiters with automatic transfer devices; and
- (d) automatic guided transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.

(2) The department shall adopt rules designating equipment that is not subject to the provisions of [sections 15 through 22], including but not limited to certain types of:

- (a) personnel hoists;
- (b) material hoists;
- (c) manlifts;
- (d) mobile scaffolds, towers, and platforms;
- (e) powered platforms and equipment for exterior and interior maintenance;
- (f) conveyors and related equipment;
- (g) cranes, derricks, hoists, hooks, jacks and slings;
- (h) industrial trucks;
- (i) portable equipment, except for portable escalators that are covered by [sections 15 through 22];
- (j) tiering or piling machines used to move materials to and from storage that are located and operating entirely within one story;
- (k) equipment for feeding or positioning materials at machine tools, printing presses, and similar locations;
- (l) furnace hoists;
- (m) railroad car lifts or dumpers; and
- (n) moving platforms and similar equipment used by an elevator contractor for installing an elevator.

(3) [Sections 15 through 22] do not apply to private residences or farm and ranch operations.

Section 16. Authority of department — rulemaking. (1) The department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of [sections 15 through 22].

(2) (a) The department shall adopt rules relating to the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of [sections 15 through 22].

(b) The department may adopt by reference national standards for equipment subject to the provisions of [sections 15 through 22], including national safety codes for elevators and escalators, safety standards for platform lifts and stairway chairs, safety codes for existing elevators and escalators, and standards for automated people movers.

(3) The department may modify or grant exceptions to any provision of [sections 15 through 22] or any rule or standard adopted pursuant to [sections 15 through 22] if to do so would not jeopardize the public safety or welfare.

Section 17. Registration of elevators and other conveyances. (1) Within 6 months of [the effective date of this section], the owners or lessees of existing elevators, dumbwaiters, escalators, or other equipment subject to the provisions of [sections 15 through 22] shall register the equipment with the department on a form provided by the department unless the equipment was previously registered with the department.

(2) The registration form must contain the type, load and speed, name of manufacturer, location, use, and any other information the department may require for each elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] that is registered pursuant to this section.

(3) Each elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] whose construction is completed subsequent to the 6-month period referred to in subsection (1) must be registered by the owner or lessee when the construction is complete.

Section 18. Permits. (1) (a) An elevator contractor may not erect, construct, install, or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] unless the elevator contractor has obtained a permit from the department and paid the requisite permit fees.

(b) Only a licensed elevator contractor may perform the work described in subsection (1)(a).

(2) Each permit application must be accompanied by copies of specifications and accurately scaled and fully dimensioned plans that:

(a) show the location of the installation in relation to the plans and elevation of the building;

(b) show the location of the machinery room and the equipment to be installed, relocated, or altered;

(c) show all structural supporting members, including foundations;

(d) specify all materials to be employed and all loads to be supported or conveyed; and

(e) are sufficiently complete to illustrate all details of construction and design.

(3) The department may by rule establish criteria for revoking a permit, including but not limited to materially false statements or misrepresentations made in conjunction with a permit application, an elevator contractor's failure to perform in accordance with the specifications or plans submitted with the application or with conditions of the permit, or the elevator contractor's failure to comply with a department stop-work order.

(4) A permit issued under this section expires:

(a) 6 months from the date of its issuance unless the permit specifies a shorter expiration period; or

(b) if an elevator contractor suspends or abandons work covered by a permit for 60 days unless the permit specifies a shorter expiration period for suspension or abandonment.

Section 19. Inspections — fees — exception. (1) Except as provided in subsection (2), all elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22], including freight elevators, must be inspected by the department to ensure compliance with the requirements of the applicable building code and [sections 15 through 22]. The department shall establish and charge a reasonable fee based on the type of equipment being inspected that may not exceed the expense of providing the inspection. Inspections must be made on an annual basis, except that freight elevator inspections must be conducted every 2 years.

(2) (a) In lieu of an inspection by the department, inspections of equipment provided for in subsection (1) may be made by a licensed elevator inspector.

(b) When an inspection is made by an elevator inspector, a copy of the condition report must be provided to the owner and a copy must be sent to the department. The department may not charge more than \$10 for receiving and processing a condition report for each individual piece of equipment in a building and for issuing a certificate of inspection for the piece of equipment if the licensed elevator inspector doing the inspection certifies to the department that there are not any deficient conditions or that all deficient conditions noted in the condition report have been corrected and that a followup inspection by the department is not necessary.

(3) It is the responsibility of the owner or lessee of equipment subject to the provisions of this section to ensure compliance with any inspection requirements.

Section 20. Testing. (1) The department shall establish by rule requirements for periodic testing of elevators, escalators, dumbwaiters, and other equipment subject to the provisions of [sections 15 through 22]. It is the responsibility of the owners or lessees of equipment subject to the provisions of this section to ensure compliance with any testing requirements.

(2) An owner or lessee shall obtain the services of a licensed elevator contractor for testing and all tests must be conducted by a licensed elevator mechanic.

Section 21. Insurance requirements. (1) Each licensed elevator contractor and licensed elevator inspector shall provide the department with a certified copy of an insurance policy issued by an insurance company authorized to do business in this state that provides at least \$1 million coverage for injury or death for any number of persons in any single occurrence and \$500,000 for property damage in any single occurrence.

(2) A licensed elevator contractor or licensed elevator inspector shall notify the department of any material policy alteration or policy cancellation within 10 days of receiving notice of the alteration or cancellation.

Section 22. Violation a misdemeanor — injunction. (1) Any person taking part or assisting in the design, construction, alteration, operation, maintenance, repair, inspection, installation, or testing of elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22] who knowingly violates any provision of [sections 15 through 22],

the applicable building code, or any lawful order of a state, county, or municipal building official is guilty of a misdemeanor.

(2) A violation described in subsection (1) may be enjoined by a district court judge in the judicial district where the violation occurs.

(3) Subsection (2) is governed by the Montana Rules of Civil Procedure.

Section 23. Section 50-60-115, MCA, is amended to read:

“50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of ~~11~~ 12 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
- (b) a practicing professional engineer licensed in Montana;
- (c) a representative from the building contractor industry;
- (d) a county, city, or town building inspector;
- (e) a representative of the manufactured housing industry;
- (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
- (g) the director of the department of health and human services or the director's designee;
- (h) a licensed electrician selected by the board of electricians;
- (i) a licensed plumber selected by the board of plumbers;
- (j) *a licensed elevator mechanic selected by the department;*
- ~~(k)~~ (k) the state fire marshal or the fire marshal's designee; and
- ~~(l)~~ (l) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122.”

Section 24. Repealer. Sections 50-60-701, 50-60-702, and 50-60-703, MCA, are repealed.

Section 25. Codification instruction. (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 14].

(2) [Sections 15 through 22] are intended to be codified as an integral part of Title 50, chapter 60, and the provisions of Title 50, chapter 60, apply to [sections 15 through 22].

Section 26. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2005.

(2) [Section 23] is effective January 1, 2006.

Approved April 19, 2005

CHAPTER NO. 304

[SB 433]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM FOR THE USE OF MEDICAID FUNDS NOT EXPENDED FOR THE PROVISION OF BASIC HEALTH AND SAFETY SERVICES BY INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; REQUIRING THE DEPARTMENT TO ESTABLISH INDIVIDUAL ACCOUNTS FOR CERTAIN PERSONS WITH DEVELOPMENTAL DISABILITIES; LIMITING THE PURPOSES FOR WHICH THE FUNDS IN THE ACCOUNTS MAY BE USED; REQUIRING THE DEPARTMENT TO MONITOR THE USE OF THE ACCOUNTS; REQUIRING A REPORT TO THE LEGISLATURE; AUTHORIZING THE DEPARTMENT TO ADOPT RULES FOR PURPOSES OF THE PILOT PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department to establish pilot program — use of allocated funds — report required — rulemaking. (1) The department shall establish a pilot program for individuals with developmental disabilities. The pilot program must be limited to those individuals in a community-based program for which the department receives medicaid funding pursuant to a waiver from the federal government under the provisions of section 1915(c) of the Social Security Act, 42 U.S.C. 1396n(c). The purpose of the pilot program is to test the feasibility of the receipt and use of medicaid funding not expended by the individuals for their basic health and safety services needs by individuals with developmental disabilities for services in addition to or to reinforce those necessary for basic health and safety.

(2) As part of the pilot program, the department shall identify and allocate to each individual with a developmental disability, as defined in 53-20-102, chosen for the pilot program general fund money to be used for the care of the individual. The individual may choose to place up to one-half of the money not needed by the individual for basic health and safety services in an individual waiver account established by the department.

(3) Money allocated in an individual waiver account may be used by the individual with a developmental disability for whom the account is established only for the purchase of one or more additional waiver services not needed for the basic health and safety of the individual or to reinforce basic health and safety services. Those additional or other services must be determined by the individual, the individual's case manager, and the individual's guardian, if a guardian has been appointed.

(4) If the person with a developmental disability for whom an account is established dies or changes residency to another place outside of Montana, money remaining in the account is within the sole control of the department.

(5) In establishing and conducting the pilot program, the department may determine conditions and operating features of the pilot program necessary for the success of the program. The pilot program may be used for no more than 50 persons with developmental disabilities, as selected by the department.

(6) The department shall monitor the use of the individual waiver accounts and provide a report to the legislature on the feasibility and desirability of establishing accounts for other persons with developmental disabilities cared for in a community-based program. The report must be made to the legislature as provided in 5-11-210.

(7) The department may adopt rules to implement this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Termination. [This act] terminates January 1, 2011.

Approved April 19, 2005

CHAPTER NO. 305

[SB 491]

AN ACT GENERALLY REVISING BENEFITS AND DEFINITIONS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; CHANGING HOW AVERAGE SALARIES ARE CALCULATED TO DETERMINE BENEFIT AMOUNTS; AMENDING SECTIONS 19-13-104, 19-13-704, 19-13-803, AND 19-13-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, ~~excluding~~ *excluding* overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, ~~excluding~~ *excluding* overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) ~~overtime~~, *overtime*, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

~~(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of final average compensation.~~

~~(6)~~(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

~~(7)~~(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member ~~becomes reaches~~ both ~~age~~ 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 2. Section 19-13-704, MCA, is amended to read:

“19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's ~~final~~ *highest* average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member's ~~final~~ *highest* monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member's ~~final~~ *highest* monthly compensation plus 2% of the member's ~~final~~ *highest* monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104.”

Section 3. Section 19-13-803, MCA, is amended to read:

“19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's ~~final~~ *highest* average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's ~~final~~ *highest* average compensation for each year of service credit.

(2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-13-104.”

Section 4. Section 19-13-902, MCA, is amended to read:

“19-13-902. Survivorship benefit. (1) A member's surviving spouse, if there is one, must receive a survivorship benefit amount as provided in this section. If a member leaves no surviving spouse or upon the death of the surviving spouse, the member's surviving dependent children must collectively receive the same benefit that a surviving spouse would have received under this section. A child may receive a share of the benefit as long as the child is a dependent child, as defined in 19-13-104.

(2) (a) The survivorship benefit paid upon the death of an active member who has completed less than 20 years of membership service is one-half the ~~final~~ *highest* average compensation received by the member.

(b) The survivorship benefit paid upon the death of an active or inactive member who has completed over 20 years of membership service is the benefit amount to which the member was entitled on the date of death.

(3) Benefits provided under this section are subject to the benefit adjustments provided pursuant to part 10 of this chapter.”

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Applicability. [This act] applies to benefits calculated on or after [the effective date of this act].

Approved April 19, 2005

CHAPTER NO. 306

[HB 396]

AN ACT ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED ASTHMA MEDICATION; PROVIDING DEFINITIONS; REQUIRING DOCUMENTATION; PROVIDING FOR NOTICE TO THE PARENTS OR GUARDIANS THAT THE SCHOOL DISTRICT MAY NOT INCUR LIABILITY FOR ANY INJURY ARISING OUT OF THE SELF-ADMINISTRATION OF MEDICATION UNLESS THE ACT OR OMISSION IS THE RESULT OF GROSS NEGLIGENCE, WILLFUL AND WANTON CONDUCT, OR AN INTENTIONAL TORT; PROVIDING AN EXEMPTION FOR YOUTH CORRECTIONAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant-certified who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant-certified, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant-certified, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant-certified, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 20, 2005

CHAPTER NO. 307

[HB 6]

AN ACT REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE RENEWABLE RESOURCE GRANT ACCOUNT; TEMPORARILY REVISING THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from renewable resource grant and loan program state special revenue account. (1) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation up to:

(a) \$100,000 to be used for emergency projects; and

(b) \$300,000 to be used for planning grants to be awarded by the department over the course of the biennium.

(2) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation \$4.6 million that is available in the renewable resource state special revenue account for grants to political subdivisions and local governments during the 2005 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2005 report to the 59th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Milk River Joint Board of Control	
(Halls Coulee Siphon Repair)	\$100,000
Spring Meadows—Missoula County Water District	
(Drinking Water Project)	\$100,000

Ch. 307	MONTANA SESSION LAWS 2005	994
Montana State University		
(Four Corners Surface and Ground Water Study)		\$99,618
Beaverhead Conservation District		
(Spring Creek Restoration)		\$100,000
St. Ignatius, Town of		
(Wastewater Improvement Project)		\$100,000
Montana Department of Natural Resources and Conservation		
(Deadman's Basin Supply Canal Rehabilitation Project)		\$100,000
Jefferson Valley Conservation District		
(Jefferson River Restoration)		\$95,469
Carter—Chouteau County Water and Sewer District		
(Drinking Water Project)		\$100,000
Sheridan, Town of		
(Drinking Water Project)		\$100,000
Lower Yellowstone Irrigation District		
(Lower Yellowstone Canal)		\$100,000
Montana Department of Natural Resources and Conservation		
(Frenchman Dam Rehabilitation Study)		\$100,000
Montana Department of Natural Resources and Conservation		
(Martinsdale North Dam Riprap Program)		\$100,000
Seeley Lake Sewer District		
(Wastewater Improvement Project)		\$100,000
Upper/Lower River Road Water and Sewer District		
(Drinking Water and Wastewater Project)		\$100,000
Buffalo Rapids Irrigation District		
(Canal Automation)		\$88,955
Choteau, City of		
(Drinking Water Project)		\$100,000
Dodson, Town of		
(Wastewater System Improvements)		\$100,000
Gallatin County		
(Floodplain Delineation Project)		\$100,000
Yellowstone Irrigation District		
(Flow Measurement Project)		\$100,000
Gardiner—Park County Water District		
(Drinking Water Project)		\$100,000
Liberty County Conservation District		
(Chester Sprinkler Irrigation Project)		\$100,000

995	MONTANA SESSION LAWS 2005	Ch. 307
Cascade, Town of		
(Drinking Water Project)		\$100,000
Ranch County Water and Sewer District		
(Drinking Water Project)		\$100,000
Libby, City of		
(Wastewater Improvement Project)		\$100,000
Broadview, Town of		
(Broadview Water Supply Study)		\$99,997
Montana Department of Natural Resources and Conservation		
(Martinsdale Outlet Canal Drop Structures)		\$100,000
Roosevelt County Conservation District		
(Fort Peck Irrigation Quality and Quantity Phase I)		\$99,995
Buffalo Rapids Irrigation District		
(Improving Efficiency and Quality)		\$100,000
Paradise Valley Irrigation District		
(Turnout Replacement Project)		\$100,000
Manhattan, Town of		
(Wastewater Improvement Project)		\$100,000
Woods Bay Homesites County Water and Sewer District		
(Water System Improvements)		\$100,000
Custer Area, Yellowstone County Water and Sewer District		
(Wastewater Improvement Project)		\$100,000
Fort Belknap Irrigation District		
(Sugar Factory Lateral Project Phase II)		\$100,000
Laurel, City of		
(Wastewater Improvement Project)		\$100,000
Yellowstone Conservation District		
(Canyon Creek Restoration)		\$100,000
Valier, Town of		
(Wastewater Improvement Project)		\$100,000
Fairfield, Town of		
(Wastewater Improvement Project)		\$100,000
Glasgow Irrigation District		
(Vandalia Dam Improvements Phase III)		\$100,000
Ennis, Town of		
(Wastewater Improvement Project)		\$100,000
Bighorn Conservation District		
(Alluvial Aquifers of Northern Bighorn County)		\$100,000

Ch. 307	MONTANA SESSION LAWS 2005	996
Savage Irrigation District		
(Rehabilitation Planning Study)		\$62,814
Butte-Silver Bow		
(Big Hole River Transmission Line Replacement)		\$100,000
Whitefish, City of		
(Drinking Water Project)		\$100,000
Circle, Town of		
(Wastewater Improvement Project)		\$100,000
Black Eagle Water and Sewer District		
(Drinking Water Project)		\$50,000
Lewis and Clark Conservation District		
(Florence Canal Rehabilitation Project)		\$100,000
Livingston, City of		
(Livingston Flood Damage Reduction Study)		\$100,000
Missoula County		
(Grant Creek Restoration and Flood Mitigation)		\$100,000
Liberty County Conservation District		
(Marias Baseline Development Project)		\$100,000
Hammond Irrigation District		
(Porcupine Creek Siphon Rehabilitation)		\$38,200
Bear Creek, Town of		
(Drinking Water Project)		\$100,000
Ryegate, Town of		
(Wastewater System Improvements)		\$100,000
Sun Prairie Village County Water and Sewer District		
(Drinking Water Project)		\$100,000
Butte-Silver Bow		
(Water Master Plan)		\$100,000
Montana Department of Natural Resources and Conservation		
(Increasing Montana Water Management Capacity)		\$99,714
Milk River Joint Board of Control		
(Lake Sherburne Dam Outlet Works Rehabilitation)		\$100,000
Bigfork—Flathead County Water and Sewer District		
(Wastewater System Improvements)		\$100,000
Ruby Valley Conservation District		
(Ground Water Management Plan)		\$33,694
Cartersville Irrigation District		
(Sand Creek Siphon Rehabilitation Project)		\$100,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2007 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 59th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 59th legislature for the 2007 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan program state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Fund transfer. At the beginning of fiscal year 2007, the amount of \$600,000 is transferred from the state general fund to the renewable resource grant and loan program state special revenue account established in 85-1-604 for the purpose of making grants.

Section 7. Section 85-1-604, MCA, is amended to read:

“85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(c) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for:

(a) grants for designated projects *and the activities authorized in 85-1-602(1)(a)*; and

(b) administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of the grant and loan program. The expenses under this subsection (3)(b) may be funded before funding of projects.

(4) *For the biennium beginning July 1, 2005, appropriations may be made from the renewable resource grant and loan program state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs.”*

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2005.

Section 11. Termination. [Section 7(4)] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 308

[HB 7]

AN ACT PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; TEMPORARILY AUTHORIZING ADDITIONAL USES OF THE RECLAMATION AND DEVELOPMENT GRANTS STATE SPECIAL REVENUE ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; TRANSFERRING FUNDS; TEMPORARILY REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants.

(1) The amount of \$4.9 million is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account established in 90-2-1104 from funds allocated for the purpose of making grants from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 5].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would not otherwise receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 59th legislature for the 2007 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation	
(2005 Eastern District Orphaned Well Plug and Abandonment)	\$300,000
Montana Board of Oil and Gas Conservation	
(2005 Northern District Orphaned Well Plug and Abandonment)	\$300,000
Montana Department of Environmental Quality	
(Bluebird Mine Reclamation)	\$300,000

Ch. 308	MONTANA SESSION LAWS 2005	1000
Montana Department of Environmental Quality		
(Frohner Mine Reclamation)		\$300,000
Montana Department of Environmental Quality		
(Buckeye Mine and Millsite Reclamation)		\$300,000
Lewistown, City of		
(Reclamation of Brewery Flats on Big Spring Creek)		\$300,000
Montana Department of Natural Resources and Conservation		
(St. Mary Studies and Design)		\$900,000
Butte-Silver Bow Local Government		
(Belmont Shaft Failure and Subsidence Mitigation)		\$300,000
Pondera County		
(Oil and Gas Well Plug and Abandonment)		\$100,000
Custer County Conservation District		
(Yellowstone River Resource Conservation Project)		\$299,965
Teton County		
(Oil and Gas Well Plug and Abandonment)		\$50,000
Toole County		
(Plugging and Abandonment Aid to Small Oil Operators)		\$150,000
Montana Department of Environmental Quality		
(Zortman Mine—Completion of Reclamation Alternative Z6)		\$300,000
Butte-Silver Bow Local Government		
(Excelsior Reclamation)		\$129,800
Powell County		
(Wetland Reclamation and Redevelopment)		\$240,850
Montana Department of Environmental Quality		
(MTS Tire Recyclers Cleanup)		\$300,000
Montana Department of Environmental Quality		
(Former Harlem Equity Co-Op Bulk Plant)		\$285,572
(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2007 biennium pursuant to 17-7-302.		

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2007 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Fund transfers. On July 1, 2005, there is transferred from the reclamation and development grants special revenue account established in 90-2-1104:

(1) \$57,115.94 to the environmental contingency account established in 75-1-1101; and

(2) \$400,000 to the renewable resource grant and loan program state special revenue account created in 85-1-604.

Section 7. Section 90-2-1104, MCA, is amended to read:

“90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in 15-36-331.

(3) ~~Appropriations~~ *After the fund transfers in [section 6] are made, appropriations* may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects.

(4) *For the biennium beginning July 1, 2005, appropriations may be made from the reclamation and development grants special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs."*

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2005.

Section 10. Termination. (1) [Section 7(3)] terminates July 30, 2005.

(2) [Section 7(4)] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 309

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 58TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan

Amount

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Deadman's Basin Supply Canal Rehabilitation Project	55,000
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Martinsdale North Dam Riprap Project	90,000
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CARTERSVILLE IRRIGATION DISTRICT

Sand Creek Siphon Rehabilitation Project	40,000
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Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 58th legislature in Chapter 297, Laws of 2003, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2005. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) through (4) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
LOCKWOOD WATER AND SEWER DISTRICT	
Wastewater Collection and Treatment Works	3,300,000

(3) GROUP B: The interest rate for the projects in this group will be 4.5% on the first \$250,000 and 2.25% on the next increment of the loan up to \$500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

Loan	Amount
LOWER WILLOW CREEK DRAINAGE DISTRICT	
Lower Willow Creek Dam Rehabilitation	295,000

(4) GROUP C: The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	572,000

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

North Fork of the Smith River Dam Rehabilitation	557,000
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Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$7,236,264, of which \$4,909,000 is to be used to finance the projects approved in [sections 1 and 2], \$1,669,422 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, and up to \$657,842 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower

interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan program state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 310

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2006 AND 2007; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING THE REQUIREMENT THAT STATE AGENCIES PROVIDE INFORMATION CONCERNING POTENTIAL ENERGY SAVINGS; AMENDING SECTION 90-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-605, MCA, is amended to read:

“90-4-605. Preparation of energy conservation program. (1) The department shall ~~work with state agencies to~~ identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building. *Upon request of the department, a state agency shall provide the department with information necessary to allow the department to comply with this requirement.*

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) Upon completion of the energy analyses, the department shall identify estimated costs and savings to the state based on these analyses. If the estimated savings are determined to be greater than the bond payment costs for a particular project, the department shall notify the department of administration. Upon receipt of the notification, the department of administration shall implement a design and construction project using bond proceeds for the costs of the project.

- (4) The department shall compile a report that must include the following:
 - (a) a listing of contacts between the department and other state agencies;
 - (b) a summary of the department's review of agency requests and a selection of projects for indepth analysis;
 - (c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and
 - (d) a listing of additional projects under consideration, for which energy analyses have not been conducted.
- (5) The department shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year."

Section 2. Bond authorization — appropriation. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed \$3.75 million for fiscal years 2006 and 2007 for the projects approved in [section 3] and to fulfill the duties imposed by 90-4-605 and 90-4-607, as provided in [section 4]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill the duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 3]. For the purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds are appropriated to and must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

Section 3. Approval of energy conservation projects. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves for fiscal years 2006 and 2007 the following energy conservation projects:

- (a) Mitchell building, phase II and capitol energy projects, department of administration, Helena, Montana;
- (b) Miles City headquarters building, department of fish, wildlife and parks, Miles City, Montana;
- (c) Pershing and Brockman halls, Montana state university-northern, Havre, Montana;
- (d) petroleum building, Montana tech of the university of Montana, Butte, Montana;
- (e) Montana mental health and nursing care center, phase II boiler upgrade project, department of public health and human services, Lewistown, Montana;
- (f) boiler replacements in academic support center, McMullen hall, Montana state university-Billings, Billings, Montana;
- (g) high side kitchen ventilation, men's prison, department of corrections, Deer Lodge, Montana;

(h) health sciences phase II ground water cooling and heating, ventilation, and air conditioning improvements, university of Montana-Missoula, Missoula, Montana;

(i) irrigation and Aspen hall, Montana school for the deaf and blind, Great Falls, Montana;

(j) boiler replacement, women's prison, department of corrections, Billings, Montana; and

(k) wood-fired boiler, university of Montana-western, Dillon, Montana.

(2) In addition to the energy conservation projects referred to in subsection (1), the department of environmental quality may expend funds appropriated under [section 4] to respond to energy saving opportunities. Energy saving opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects.

(3) For purposes of this section, "energy saving opportunities" means opportunities to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 2], the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package for fiscal years 2008 and 2009.

Section 4. Appropriation of bond proceeds. The amount of \$400,000 is appropriated from bond proceeds authorized by Chapter 50, Laws of 1999, Chapter 240, Laws of 2001, Chapter 497, Laws of 2003, and [section 2] to the department of environmental quality in order to fulfill its duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation for the 2007 biennium only.

Section 5. Two-thirds vote required. Because [section 2] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 2].

Section 6. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 311

[HB 30]

AN ACT CLARIFYING THAT LEGISLATORS-ELECT ARE ENTITLED TO COMPENSATION AND EXPENSES FOR AUTHORIZED PRESESSION ACTIVITY; AMENDING SECTION 5-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-203, MCA, is amended to read:

"5-2-203. Compensation and expenses — definition. (1) Members of the legislature attending the presession caucus, provided for in 5-2-201, and

legislative orientation and training are entitled to receive compensation and expenses as provided in 5-2-302. *The legislative services division shall place the members on the payroll roster, provided for in 2-18-404, in order to pay the compensation and expenses.*

(2) While engaged in pre-session business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

(3) *As used in this section:*

(a) *“holdover senator” means a senator who was not required to seek election at the general election held immediately prior to the pre-session caucus; and*

(b) *“member” means a holdover senator, senator-elect, or representative-elect who is eligible to serve in the ensuing legislative session.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to November 2, 2004.

Approved April 21, 2005

CHAPTER NO. 312

[HB 40]

AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-231, MCA, is amended to read:

“17-8-231. Liability for false claims, records, or statements. (1) (a) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to ~~any~~ a state agency or its contractors forfeits the claim, including any portion that may be legitimate, and ~~in addition~~ is subject to a civil penalty of not to exceed \$2,000 plus double the amount of damages sustained by the state as a result of the false claim; ~~including all legal costs. The court shall also award expenses, costs, and attorney fees.~~

(b) *A person who knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a state agency or its contractors is subject to a civil penalty of not to exceed \$2,000 plus double the amount of damages sustained by the state as a result of the false record or statement. The court shall also award expenses, costs, and attorney fees.*

(2) *This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.*

~~(2)(3)~~ *The A forfeiture and the penalty may be sued for in the same suit.”*

Section 2. Section 45-7-210, MCA, is amended to read:

~~“45-7-210. False claims claim to public agencies agency.~~ (1) A person commits an offense under this section if the person ~~purposely and knowingly~~ presents for allowance, ~~or for payment any, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a~~ false or fraudulent claim, bill, account, voucher, or writing to ~~any a~~ public agency, public servant, or contractor authorized to allow or pay *valid* claims presented to ~~a public agencies if genuine agency.~~

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) ~~If a false or fraudulent claims are claim is knowingly submitted purposely and knowingly~~ as part of a common scheme or if the value of the claim or the aggregate value of ~~all one or more~~ claims exceeds \$1,000, a person convicted of an offense under this section shall be fined not to exceed \$10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 313

[HB 49]

AN ACT GENERALLY REVISING THE LAW REQUIRING THE REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; AMENDING THE DEFINITION OF “SEXUAL OFFENSE”; CHANGING WITH WHOM AN OFFENDER MUST REGISTER; CLARIFYING THE PROCEDURE FOR NOTICE OF A CHANGE OF AN OFFENDER’S ADDRESS; CHANGING THE PROCEDURE FOR PETITIONING FOR RELIEF FROM REGISTRATION AFTER 10 YEARS; ALLOWING AN OFFENDER CONVICTED IN ANOTHER JURISDICTION TO BE GIVEN THE RISK LEVEL DESIGNATION ASSIGNED BY THAT JURISDICTION; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, AND 46-23-509, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) “Personality disorder” means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) “Predatory sexual offense” means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government *that is* reasonably equivalent to a violation listed in subsection (6)(a) *or for which the offender was required to register as a sex offender after conviction.*

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) *or (1)(c)* must be with the ~~probation office having supervision over the offender. Registration under subsection (1)(c) must be with the~~ chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. ~~Whichever person an law enforcement official the offender registers with under subsection (1)(c) shall notify the other person official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate law enforcement agency.~~

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice.

(4) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part ~~changes residence~~ *has a change of address*, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered *or, if the offender was initially registered under 46-23-504(1)(b), to the department and to the chief of police of the municipality or sheriff of the county from which the offender is moving.* The agency *or department* shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new ~~place of residence~~ *address* and to the chief of police of the municipality of the new ~~place of residence~~ *address* if the new ~~place of residence~~ *address* is in a municipality."

Section 4. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, *but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a);* or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of

the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) *An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).*

(b) Except as provided in subsection (5), at any time after 10 years of registration, ~~the~~ *an offender required to register for life* may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

~~(a)(i)~~ the offender has remained a law-abiding citizen; and

~~(b)(ii)~~ continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding *under subsection (3)(b)* is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) *If an offense is covered by 46-23-502(6)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government."*

Approved April 21, 2005

CHAPTER NO. 314

[HB 53]

AN ACT PROVIDING THAT CERTAIN FUNDS COLLECTED BY OR ON BEHALF OF THE BOARD OF HORSERACING BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 23-4-105, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; *23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.*

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 2. Section 23-4-105, MCA, is amended to read:

“23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-121, license and regulate racing and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in ~~the board's agency fund~~ *a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502.* The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently ~~engaged~~ *authorized* in

Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both the economic and safety impacts on the existing racing and breeding industry.”

Section 3. Section 23-4-202, MCA, is amended to read:

“23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which ~~they~~ *the stewards* officiate may exclude from racecourses ~~in this state~~ a person whom the board *or board of stewards* considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may ~~forbid~~ *prohibit* application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards’ rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in ~~the board’s agency fund~~ *a state special revenue* account *and statutorily appropriated to the board as provided in 17-7-502*. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.”

Section 4. Section 23-4-204, MCA, is amended to read:

“23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet must be limited to horses bred in this state unless, in the board’s judgment, there is an insufficient number of Montana-bred horses for the race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead. Races with exclusively Montana-bred horses must be run for 20% higher purses than races in comparable conditions that are not run with exclusively Montana-bred horses.

(2) The licensee conducting the race meet shall pay a sum equal to 10% of the first money of every purse won by a horse bred in this state to the breeder of the horse within 30 days of the end of the race meet. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) Three percent of exotic wagering on a simulcast race must be deposited in ~~the board’s agency fund account~~ *a state special revenue account. Those funds are statutorily appropriated to the board as provided in 17-7-502.* The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 5. Section 23-4-302, MCA, is amended to read:

“23-4-302. Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in ~~the board’s agency fund~~ *a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502.* The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 6. Section 23-4-304, MCA, is amended to read:

“23-4-304. Gross receipts — department’s percentage — collection and allocation. (1) (a) The licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day’s parimutuel betting at each race meet. At the end of each race meet the licensee

shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in ~~the board's agency fund~~ *a state special revenue* account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in ~~the board's agency fund~~ *a state special revenue* account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through ~~the board's agency fund~~ *a state special revenue* account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

(3) *The funds collected under this section and deposited in a state special revenue account are statutorily appropriated to the board as provided in 17-7-502."*

Section 7. Effective date. [This act] is effective July 1, 2007.

Approved April 21, 2005

CHAPTER NO. 315

[HB 55]

AN ACT REQUIRING PERMANENT REGISTRATION OF TRAILER AND SEMITRAILER FLEETS; ESTABLISHING A PERMANENT REGISTRATION FEE; REQUIRING SURRENDER TO THE DEPARTMENT OF TRANSPORTATION OF THE REGISTRATION AND LICENSE PLATE OF A TRAILER OR SEMITRAILER THAT IS REMOVED FROM A FLEET; AMENDING SECTION 61-3-721, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-721, MCA, is amended to read:

“61-3-721. Proportional registration of fleet vehicles, registration periods, application, fee formula, and payment — *permanent registration of trailer and semitrailer fleets* — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation.

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) and subsection (6) of this section, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, “calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31 1st period
- (b) April 1 through June 30.....2nd period
- (c) July 1 through September 30 3rd period
- (d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

~~(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.~~

~~(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.~~

~~(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.~~

~~(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.~~

~~(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.~~

~~(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.~~

~~(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.~~

~~(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.~~

~~(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate. Upon renewal or new registration, each trailer or semitrailer fleet must be permanently registered and assessed a registration fee equal to five times the amount required in 61-3-321(1)(j). Each trailer and semitrailer in the fleet must be issued a permanent license plate and sticker.~~

~~(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer or semitrailer.~~

~~(8) If the owner of a fleet removes a trailer or semitrailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer or semitrailer to the department of transportation. The owner may not transfer the license plate and sticker to a trailer or semitrailer that is added to the fleet.~~

~~(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.~~

~~(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."~~

Section 2. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-721 must be amended as follows:

"61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to motor vehicle, trailer, semitrailer, or pole trailer registration that is required by the department of transportation.

(2) ~~Each~~ Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must, ~~except as provided in 61-3-318(1) and subsection (6) of this section,~~ be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31 1st period
- (b) April 1 through June 30 2nd period
- (c) July 1 through September 30 3rd period
- (d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable *motor* vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable *motor* vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, *arrangement*, or *declaration* entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer* in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) ~~(a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.~~

~~(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.~~

~~(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.~~

~~(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.~~

~~(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.~~

~~(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with~~

~~the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.~~

~~(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.~~

~~(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.~~

~~(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate. Upon renewal or new registration, each trailer, semitrailer, or pole trailer fleet must be permanently registered and assessed a registration fee of \$82.50. Each trailer, semitrailer, or pole trailer in the fleet must be issued a permanent license plate and sticker.~~

~~(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer, semitrailer, or pole trailer.~~

~~(8) If the owner of a fleet removes a trailer, semitrailer, or pole trailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer, semitrailer, or pole trailer to the department of transportation. The owner may not transfer the license plate and sticker to a trailer, semitrailer, or pole trailer that is added to the fleet.~~

~~(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.~~

~~(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."~~

Section 3. Effective date. [This act] is effective January 1, 2006.

Approved April 21, 2005

CHAPTER NO. 316

[HB 70]

AN ACT EXEMPTING COUNTY COMMISSIONERS OF CERTAIN COUNTIES FROM THE RESTRICTION ON APPOINTMENT OF RELATIVES TO POSITIONS WITHIN THE COUNTY; REQUIRING THE COUNTY COMMISSIONER RELATED TO THE PERSON BEING APPOINTED TO ABSTAIN FROM VOTING ON THE APPOINTMENT; PROVIDING FOR SPECIFIC NOTICE OF THE INTENDED APPOINTMENT; AND AMENDING SECTION 2-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-302, MCA, is amended to read:

“2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of *2-2-303* and this section ~~and 2-2-303~~ do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges; ~~or~~

(f) the employment of pages or temporary session staff by the legislature; *or*

(g) *county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.*

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), ~~the school district trustees shall give written notice of the time and place of their for the intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located.”~~

Approved April 21, 2005

CHAPTER NO. 317

[HB 73]

AN ACT AUTHORIZING A COUNTY, CITY, TOWN, OR MUNICIPALITY TO IMPOSE A VOTED LEVY FOR PROGRAMS THAT PREVENT SUBSTANCE ABUSE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prevention program voted levy. (1) If authorized by the electors, the governing body of a county, city, town, or municipality may establish a fund to create and maintain prevention programs within the geographic boundaries of the governing body by a levy on the taxable property within the county, city, town, or municipality. The tax levy is in addition to all other tax levies. The election to authorize the levy must be conducted as provided in 15-10-425.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the creation, maintenance, and development of prevention programs.

(3) For the purposes of this section, "prevention programs" includes programs that reduce substance abuse.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 21, and the provisions of Title 7, chapter 6, part 21, apply to [section 1].

Section 3. Coordination instruction. If Senate Bill No. 301 and [this act] are both passed and approved, then [this act] is void and [section 7] of Senate Bill No. 301 is amended to read:

"Section 7. County taxation — purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in 7-11-1106;
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, or collection of exhibits as provided in 7-16-2205;
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
- (13) weed control and management purposes as provided in 7-22-2142;
- (14) insect control programs as provided in 7-22-2306;
- (15) fire control as provided in 7-33-2209;
- (16) ambulance service as provided in 7-34-102;
- (17) public health purposes as provided in 50-2-111 and 50-2-114;
- (18) public assistance purposes as provided in 53-3-115;

- (19) indigent assistance purposes as provided in 53-3-116;
- (20) developmental disabilities facilities as provided in 53-20-208;
- (21) mental health services as provided in 53-21-1010;
- (22) airport and landing field purposes as provided in 67-10-402 and 67-11-302;
- (23) purebred livestock shows and sales as provided in 81-8-504; ~~and~~
- (24) economic development purposes as provided in 90-5-112; *and*
- (25) *prevention programs, including programs that reduce substance abuse.*

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 318

[HB 85]

AN ACT ELIMINATING CERTAIN REQUIREMENTS FOR REPORTING BY THE DEPARTMENT OF REVENUE TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE AND THE LEGISLATURE; AMENDING SECTIONS 15-6-218 AND 15-30-1114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-218, MCA, is amended to read:

“15-6-218. Intangible personal property exemption. (1) ~~Except as provided in subsection (3), intangible~~ *Intangible* personal property is exempt from taxation.

(2) For the purposes of this section, “intangible personal property” means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissary notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) ~~The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.~~

(4) ~~The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).~~

~~(5) The department shall report intangible personal property annually to the revenue and transportation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001."~~

Section 2. Section 15-30-1114, MCA, is amended to read:

"15-30-1114. Review of pass-through entity taxation by department.

~~(1)~~ The department shall review, with the assistance of interested parties, the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and shall consider recommendations concerning the methodology that Montana should use to ensure fair and equitable taxation of income that flows through pass-through entities to other entities.

~~(2) The department shall report to the revenue and transportation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1)."~~

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 319

[HB 89]

AN ACT CHANGING THE REQUIREMENTS OF THE ELECTRONIC VIDEO GAMBLING MACHINE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; DEFINING "ELECTRONICALLY CAPTURED DATA"; ELIMINATING THE TAX CREDIT AND LOAN PROVISIONS FOR MACHINE OWNERS PARTICIPATING IN THE SYSTEM; ELIMINATING THE PLEDGE OF MACHINE TAXES TO GUARANTEE REPAYMENT OF THE LOANS; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; REPEALING SECTION 23-5-638, MCA, AND SECTION 10, CHAPTER 424, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

~~(2) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.~~

~~(3)~~(2) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4)(3) (a) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) *"Electronically captured data" means video gambling machine accounting information and records of video gambling machine events, in electronic form, that are automatically recorded and communicated to the department through an approved automated accounting and reporting system.*

(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(8) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department."

Section 2. Section 23-5-610, MCA, is amended to read:

"23-5-610. ~~(Temporary)~~ Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

~~(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:~~

~~(i) the permit was active for the video gambling machine prior to the available connection date;~~

~~(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and~~

~~(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.~~

~~(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.~~

~~(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-627.~~

~~(4)(2)~~ A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

~~(5) (a)(3)~~ For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

~~(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~(6)(4)~~ ~~Except as provided in subsection (7), the~~ The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection ~~(5) (3)~~ to the general fund.

~~(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)~~

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax credit records distribution quarterly statement and payment. (1) A licensed machine owner shall pay to the department a

~~video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.~~

~~(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:~~

~~(i) the permit was active for the video gambling machine prior to the available connection date;~~

~~(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and~~

~~(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.~~

~~(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.~~

~~(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.~~

~~(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.~~

~~(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.~~

~~(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund."~~

Section 3. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno, bingo, or combination poker-keno-bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of ~~bingo and keno video keno, bingo, or combination poker-keno-bingo gambling~~ machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

Section 4. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine ~~approved for connection to the department's automated accounting and reporting system~~ to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if:

~~(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system to report video gambling machine information utilizing an approved automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the to utilize an approved automated accounting and reporting system; or~~

~~(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement~~

~~with the department for connection of the machine to the system, but the system is unavailable for connection;~~

(e) allow, on an individual license basis, licensed machine owners and operators of machines ~~connected to the department's~~ *that utilize an approved* automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected ~~by the department~~ for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of ~~the department's~~ *an approved* automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

~~(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and~~

~~(g)~~(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that ~~are connected to the department's~~ *utilize an approved* automated accounting and reporting system.

(2) The department's rules for an *approved* automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the *approved* automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the *approved* automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department ~~based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account;~~

~~(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.~~

~~(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.~~

(d) *describe specifications and a review and testing process for approved automated accounting and reporting systems to be utilized by licensed operators, including the requirements for electronically captured data; and*

(e) *prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators."*

Section 5. Section 23-5-637, MCA, is amended to read:

"23-5-637. Automated Approved automated accounting and reporting system systems. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may operate and maintain, subject to the restrictions contained in subsections (3) and (4), approve an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection (4), ~~connection of video gambling machines to the department's~~ (5) or as provided in an agreement for multiple-game software, utilization of an approved automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license prior to the available connection date.

(3) ~~(a) The department shall issue a request for proposals for the automated accounting and reporting system. The department may not sign a final contract for the purpose of acquiring an automated system unless it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated system and whose commitment to participate covers 70% of the total number of video gambling machines that are capable of being connected to the automated system.~~

~~(b) The 70% calculation must be based on video gambling machines that had permits on July 15 prior to the contract date and on an analysis by the department of the feasibility of upgrading specific video gambling machine models based on the age of the video gambling machines, technologies employed, numbers of video gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support upgraded conversions.~~

~~(c) A request for proposals for the system must require that the proposal:~~

~~(i) provide that communication protocols between connected video gambling machines and the central system and between connected video gambling machines and on-premises site controllers do not favor any one central system vendor or component manufacturer; and~~

~~(ii) provide for computer backup and contingency planning to ensure that there will be no video gambling machine operation interruptions because of central system failures. An approved automated accounting and reporting system must provide for the recording and entry of video gambling machine permit and tax information and for the electronic transfer of funds through the use of web entry technology, the internet, or direct electronic communication with the department.~~

~~(4) After the available connection date:~~

~~(a) a~~ A permit may not be issued for a video gambling machine manufactured after the available connection date July 1, 2005, that is not manufactured in a manner specifically designed to allow the video gambling machine to be connected to the department's automated accounting and reporting system comply with communications standards adopted by department rules.

~~(b)(5) if~~ If a permit holder voluntarily connects one or more video gambling machines at a premises to the department's utilizes an approved automated

accounting and reporting system *for one or more video gambling machines at a premises*, all ~~connected~~ video gambling machines on the premises *that utilize the approved system*, including video gambling machines replacing ~~connected~~ video gambling machines *that utilize the approved system*, must ~~remain connected to the automated system~~ continue to use the approved system as long as video gambling machines are operated on the premises; ~~and~~

~~(c) if there is a change in the majority ownership interests of a licensed gambling business, all video gambling machines located on the premises must be connected to the department's automated accounting and reporting system within 5 years after the date on which the majority ownership change is approved by the department, unless there are five or fewer video gambling machines on the premises and:~~

~~(i) they are owned by the licensed operator; or~~

~~(ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the last official decennial census."~~

Section 6. Repealer. Section 23-5-638, MCA, and section 10, Chapter 424, Laws of 1999, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 320

[HB 104]

AN ACT GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE PROVISION FOR ESTABLISHING A GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT AND ELIMINATING THE PROVISION'S CONTINGENT EFFECTIVE DATE; CLARIFYING PROVISIONS ON THE REDEPOSIT OF CONTRIBUTIONS FOR MEMBERSHIP SERVICE AND ON RETIREES RETURNING TO EMPLOYMENT BY STRIKING RELEVANT LANGUAGE IN CURRENT CODE SECTIONS AND RECODIFYING THE LANGUAGE AS NEW SECTIONS; PROVIDING FOR THE OPTION TO PURCHASE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SERVICE; REVISING CERTAIN PROVISIONS GOVERNING THE RECALCULATION OF BENEFITS WHEN A RETIRED MEMBER RETURNS TO EMPLOYMENT; PROVIDING FOR THE REDUCTION OF RETIREMENT BENEFITS IN LIEU OF CANCELING THE BENEFITS IN CERTAIN CIRCUMSTANCES; CLARIFYING PROVISIONS ON EMPLOYEE TERMINATION PAY CONTRIBUTIONS; AMENDING SECTIONS 19-20-208, 19-20-212, 19-20-302, 19-20-401, 19-20-407, 19-20-415, 19-20-602, 19-20-716, 19-20-718, 19-20-802, 19-20-804, 19-20-806, AND 19-20-1001, MCA, AND SECTION 29, CHAPTER 111, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of ~~19-20-804~~ [section 14];

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement."

Section 2. Section 19-20-212, MCA, is amended to read:

"19-20-212. ~~(Effective on occurrence of contingency)~~ General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) (a) ~~The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal~~

Revenue Code, the board ~~elects to~~ may establish a qualified governmental excess benefit arrangement, ~~the board shall~~ and adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code *and this section*.

(b) *An excess benefit arrangement established pursuant to this section is subject to the following requirements:*

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system. ~~The benefit arrangement is subject to the following requirements:~~

~~(a)~~(iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

~~(b)~~(v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30."

Section 3. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public

employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in ~~19-20-804~~ *[section 14]*.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the

person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

Section 4. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of ~~his~~ *the member's* employment in a capacity prescribed for his eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from ~~his~~ *the member's* compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that ~~no~~ credit may *not* be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

(d) any service awarded for employment while on leave under 19-20-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

(f) any employment service awarded by the retirement board under the provisions of 19-20-408;

(g) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

(h) any service awarded by the retirement board for extension service employment under 19-20-410; ~~and~~

(i) any service awarded for absence ~~due to~~ *because of* employment-related injury under 19-20-411; *and*

(j) *any service awarded for service purchased under [section 7].*

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that ~~he~~ *the member* would have earned if ~~his~~ *the member's* first year part-time salary had been full-time."

Section 5. Section 19-20-407, MCA, is amended to read:

"19-20-407. No duplication of credit for same period of service. A member may not receive duplicate credit for the same period of service. *A retiree returning to active service may not be granted creditable service for the same period of time that the retiree was receiving a retirement benefit.*"

Section 6. Section 19-20-415, MCA, is amended to read:

“19-20-415. Procedure for purchase of service credit and pick up. (1)

A member who wishes to redeposit, pursuant to ~~19-20-602(3)~~ [section 9], amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void, and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 7. Creditable service for employment under optional retirement program. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's participation in the optional retirement program pursuant to 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the optional retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) Members may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The provisions of 19-20-405 apply to creditable service purchased under this section.

Section 8. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund — member's contribution. (1) The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings fund must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

~~(3) In addition to the normal contributions, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.~~

~~(4)(3)~~ The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."

Section 9. Redeposit of contributions previously withdrawn. In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest in the amount that the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.

Section 10. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to ~~subsection~~ *subsections (4) and (5)*, by signing a binding, irrevocable written

election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, *except as provided in subsections (4) and (5).*

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

~~(4)(5)~~ If a member and the member's employer fail to sign the written election within the time period required in subsection (1) ~~or if the member's~~

~~contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection cannot may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."~~

Section 11. Section 19-20-718, MCA, is amended to read:

"19-20-718. ~~(Effective on occurrence of contingency)~~ Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system *required under part 4 or 6 of this chapter* that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively."

Section 12. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804~~(1)~~ and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service.”

Section 13. Section 19-20-804, MCA, is amended to read:

“19-20-804. (Temporary) Allowance for service retirement. ~~(1)~~ Except as provided in 19-20-806, upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member’s average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

~~(2) Except as provided in subsection (4), a retired member may be employed part time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~(a) one-third of the sum of the member’s average final compensation; or~~

~~(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~(3) Each year on July 1 following the member’s retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.~~

~~(4) (a) Except as provided in 19-20-806 and subsection (5) of this section, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(c) Upon retirement after cancellation of a retired member’s benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member’s previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who~~

elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).

~~(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated. (Terminates July 1, 2006—sec. 6, Ch. 120, L. 2003.)~~

19-20-804. (Effective July 1, 2006) Allowance for service retirement.

~~(1) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.~~

~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~(a) one-third of the sum of the member's average final compensation; or~~

~~(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~(3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.~~

~~(4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).~~

~~(5) If an early retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."~~

Section 14. Postretirement employment limitations — cancellation and recalculation of benefits. (1) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804, if the member has attained normal retirement age, or under 19-20-802, if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

Section 15. Section 19-20-806, MCA, is amended to read:

"19-20-806. (Temporary) Reemployment of certain retired teachers, specialists, or administrators — limitations — employer defined. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance, except a disability retirement allowance pursuant to part 9 of this chapter, for at least 12 months may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits if:

(i) the member holds a valid certificate under the provisions of 20-4-106; and

(ii) the employer provides evidence to the office of public instruction each year that the employer has been unable to fill the position because the employer has received no applications for the open position or has not received an acceptance to an offer to fill the position from a nonretired teacher, specialist, or administrator;

(b) an employer shall by the 15th day of each month report to the office of public instruction and to the ~~teachers'~~ retirement system the name, social security number, and gross earnings of each teacher, specialist, or administrator employed in the preceding month under the provisions of this section;

(c) a retired member reemployed under this section is ineligible for active membership under 19-20-302; and

(d) the office of public instruction and the ~~teachers'~~ retirement system shall report to the appropriate committee in the 2007 legislative session regarding the implementation and results of this section.

(2) A retiree reemployed pursuant to this section must be considered an active member for the purposes of calculating retirement system contributions required under 19-20-604 and 19-20-605.

(3) A retiree reemployed pursuant to this section is exempt from the earnings and employment limits provided in ~~19-20-804(2) through (5) [section 14]~~.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and protections provided by the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, "employer" means a public school district, as defined in 20-6-101 and 20-6-701, youth correctional facilities, special education cooperatives, and the Montana school for the deaf and blind. (Terminates July 1, 2006—sec. 6, Ch. 120, L. 2003.)"

Section 16. Section 19-20-1001, MCA, is amended to read:

“19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member’s accumulated contributions must be paid to the member’s estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member’s death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804(4) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member’s retirement, as acknowledged in writing by the retirement system before the member’s death.

(c) In the event that payments made to the beneficiary do not equal the amount of the member’s accumulated contributions before the member’s death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member’s death must be paid to the beneficiary’s estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member’s death, a lump-sum death benefit of \$500 is payable to the member’s designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member’s death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member’s death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.”

Section 17. Section 29, Chapter 111, Laws of 1999, is amended to read:

“Section 29. Effective date dates — contingent effective dates date.

(1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit arrangement, are effective ~~on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan~~ *July 1, 2005*.

(3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation

and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.”

Section 18. Codification instruction. (1) [Sections 7 and 9] are intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 7 and 9].

(2) [Section 14] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 14].

Section 19. Effective date. [This act] is effective on passage and approval.

Section 20. Retroactive applicability. [Section 14(4)(b)] applies retroactively, within the meaning of 1-2-109, to benefits recalculated on and after July 1, 2002.

Approved April 21, 2005

CHAPTER NO. 321

[HB 109]

AN ACT TRANSFERRING RESPONSIBILITY FOR THE MAINTENANCE OF THE CAPITOL COMPLEX GROUNDS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-811, 2-17-812, AND 2-17-817, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-803, MCA, is amended to read:

“2-17-803. Capitol complex advisory council established — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director’s designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established in 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. ~~The departments department of administration and fish, wildlife, and parks shall provide staff services to the council and share the costs associated with council operations.~~

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.”

Section 2. Section 2-17-804, MCA, is amended to read:

“2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor’s mansion; *and*

(d) advise the department of administration on interior decoration of the capitol; ~~and~~

~~(e) advise the department of fish, wildlife, and parks on, grounds maintenance, and grounds displays.~~

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in ~~its~~ design and construction;

(g) will be safely and aesthetically suited to ~~its~~ *the* installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that ~~it~~ *the council* has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.”

Section 3. Section 2-17-805, MCA, is amended to read:

“2-17-805. Function of department of administration — capitol area master plan — advice of capitol complex advisory council and

legislative council. (1) With advice from the council, the ~~departments~~ *department* of administration and ~~fish, wildlife, and parks~~ shall establish and maintain a long-range master plan for the orderly development of the capitol complex. The long-range master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based, without limitation, upon zoning regulations, population trends, and plans for rapid transit development; and

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the capitol complex.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

(3) The Montana historical society shall protect and preserve all publicly held, permanent artwork in the capitol complex and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

(4) The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol.”

Section 4. Section 2-17-811, MCA, is amended to read:

“2-17-811. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property *and grounds* in the state capitol area, which is the geographic area within a 10-mile radius of the state capitol.

(2) ~~It is the duty of the~~ *The* department ~~to~~ *shall* supervise and direct the work of caring for and maintaining buildings and equipment in the state capitol area. The department shall provide or approve all custodial, maintenance, and security work done on state-owned or leased buildings in the state capitol area.

(3) A state agency may not alter, improve, repair, or remodel a state building in the state capitol area without the approval of the department.

(4) ~~It is the duty of the~~ *The* department of ~~fish, wildlife, and parks~~ *to shall* maintain or approve the maintenance of the grounds in the state capitol area.”

Section 5. Section 2-17-812, MCA, is amended to read:

“2-17-812. Inventory of improvements. (1) The department of ~~fish, wildlife, and parks~~ *administration* shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and *the* original governor’s mansion.

(2) The Montana historical society shall maintain an inventory of all publicly held commemorative displays, statues, artwork, and plaques in the capitol complex.

(3) ~~Both agencies~~ *Each agency* shall make ~~their inventories~~ *the agency's inventory* available to the council."

Section 6. Section 2-17-817, MCA, is amended to read:

"2-17-817. Highway patrol officers' memorial. (1) The department of administration shall set aside on the capitol grounds an area on the ~~north west~~ side of the capitol for a memorial to Montana's slain highway patrol officers. The area must be agreed upon between the Montana highway patrol and the department of fish, wildlife, and parks of administration and must maintain the historical design integrity of the block on which the capitol is located, also known as capitol square.

(2) The memorial must be constructed to consider long-term maintenance efficiency and must be paid for by private donations. The memorial must be maintained with the assistance of private donations as part of the capitol grounds maintenance program provided in 2-17-811."

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 322

[HB 119]

AN ACT MAKING PERMANENT THE CRITERIA FOR THE USE OF MOTORBOAT ACCOUNT FUNDS FOR BOATING FACILITIES, INCLUDING THE USE OF FUNDS TO MATCH FEDERAL FUNDS PURSUANT TO RECOMMENDATIONS OF THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO ADMINISTER DESIGNATED PARTS OF THE STATE RECREATIONAL BOATING SAFETY PROGRAM; MAKING PERMANENT THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AMOUNT OF THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX AT FOUR TIMES THE FEE DUE; REPEALING SECTION 6, CHAPTER 511, LAWS OF 1993, SECTIONS 9 AND 10, CHAPTER 476, LAWS OF 1995, AND SECTIONS 2, 3, AND 4, CHAPTER 95, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 6, Chapter 511, Laws of 1993, sections 9 and 10, Chapter 476, Laws of 1995, and sections 2, 3, and 4, Chapter 95, Laws of 2001, are repealed.

Section 2. Effective date. [This act] is effective June 28, 2006.

Approved April 21, 2005

CHAPTER NO. 323

[HB 142]

AN ACT REVISING LAWS RELATING TO STATE FINANCE OF LOCAL WATER AND SEWER PROJECTS; AUTHORIZING THE ISSUANCE OF GRANT OR REVENUE ANTICIPATION NOTES BY THE BOARD OF

EXAMINERS; AUTHORIZING FORGIVENESS OF CERTAIN LOANS TO DISADVANTAGED COMMUNITIES UNDER THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING ADDITIONAL USES OF THE PROCEEDS OF STATE GENERAL OBLIGATION BONDS; AUTHORIZING STATE DEBT; AMENDING SECTIONS 17-5-805, 75-5-1122, 75-6-226, AND 75-6-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-805, MCA, is amended to read:

“17-5-805. Bond, grant, or revenue anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of:

- (a) the money to be derived from the sale of the bonds;
- (b) *the money to be received from the federal government for the program for which bonds may be issued; or*
- (c) *other money to be received as revenue for the specified program.*

(2) The notes must be designated as “bond anticipation notes”, “*grant anticipation notes*”, or “*revenue anticipation notes*”. The proceeds of the sale of the ~~bond anticipation~~ notes may be used only for the purposes for which the proceeds of the bonds, *grants, or revenue* could be used, including costs of issuance. If, prior to the issuance of the bonds *or receipt of the proceeds of the grants or revenue*, it becomes necessary to *pay or* redeem outstanding notes, additional ~~bond anticipation~~ notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds *or receipt of the proceeds of the grants or revenue* in anticipation of which the original notes were issued.

~~(2)(3)~~ *Bond, grant, or revenue* anticipation notes ~~or other short term evidences of indebtedness~~ maturing not more than ~~1 year~~ *2 years* after the date of issue may be issued from time to time as the proceeds ~~thereof~~ are needed. ~~Such~~ The notes must be authorized by the board and must have ~~such~~ terms and details ~~as that~~ may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

- (a) describe the need for the proceeds of the notes to be issued; and
- (b) specify:
 - (i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;
 - (ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of ~~such~~ the notes; and
 - (iii) the maturity date or maximum maturity date of the notes.

~~(3)(4)~~ Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection ~~(2)~~ (3) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and ~~such~~ other terms and details of the notes ~~as that~~ may be considered appropriate by the board; or

the state treasurer in the event of ~~such a~~ delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless ~~and until~~ the board revokes ~~such the~~ authority to refund; and

(d) such other terms and conditions ~~as~~ that the board may consider appropriate.

~~(4)~~(5) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on ~~such~~ lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions ~~as~~ that the board may authorize in the resolution approving them."

Section 2. Section 75-5-1122, MCA, is amended to read:

"75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$40 million ~~and the issuance and sale in principal amount of general obligation bonds in this amount outstanding from time to time for the purpose of:~~

(1) providing the state's share of the program; *and*

(2) *funding portions of loans on an interim basis pending receipt of:*

(a) *grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or*

(b) *other revenue for the program."*

Section 3. Section 75-6-226, MCA, is amended to read:

"75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate, *the forgiveness of principal, or a combination of both.*

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year."

Section 4. Section 75-6-227, MCA, is amended to read:

"75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed \$30 million ~~and authorizes the issuance and sale in principal amount of general obligation bonds in this amount outstanding from time to time for the purpose of:~~

(1) providing the state's share of the drinking water program; *and*

(2) *funding portions of loans on an interim basis pending receipt of:*

(a) *grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or*

(b) *other revenue for the program.”*

Section 5. Two-thirds vote required. Because [sections 2 and 4] authorize additional uses of proceeds of state debt and an increase in the amount of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 6. Coordination instruction. If both Senate Bill No. 58 and [this act] are passed and approved, then the first sentence of subsection (3) of 17-5-805 in [this act] must read:

“(3) Bond, grant, or revenue anticipation notes maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds are needed.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 324

[HB 169]

AN ACT REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE TOBACCO MASTER SETTLEMENT AGREEMENT; CLARIFYING THE APPLICATION OF THE TOBACCO RESERVE FUND LAWS TO ROLL-YOUR-OWN TOBACCO; REQUIRING A TOBACCO PRODUCT MANUFACTURER WHO WISHES TO HAVE PRODUCTS LISTED ON THE ATTORNEY GENERAL'S DIRECTORY OF PRODUCTS PERMISSIBLE FOR SALE IN MONTANA TO DEMONSTRATE COMPLIANCE WITH THE LAW; ALLOWING THE ATTORNEY GENERAL TO REQUEST THE DEPARTMENT OF JUSTICE TO PROCEED JUDICIALLY TO SEEK REVOCATION OF A NONCOMPLIANT WHOLESALER'S LICENSE; CLARIFYING THE CALCULATION OF ATTORNEY FEES, COSTS, AND PENALTIES RECOVERED IN ENFORCEMENT ACTIONS; REVISING AND EXTENDING RULEMAKING AUTHORITY; REVISING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 16-11-402, 16-11-404, 16-11-502, 16-11-503, 16-11-507, 16-11-509, 16-11-511, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-402, MCA, is amended to read:

“16-11-402. Definitions. (1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of

ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) “Allocable share” means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(5) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(6) “Qualified escrow fund” means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with 16-11-403(2) of this Act.

(7) “Released claims” means Released Claims as that term is defined in the Master Settlement Agreement.

(8) “Releasing parties” means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) “Tobacco Product Manufacturer” means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b). The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco

product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) ~~bearing the excise tax stamp of the State.~~ The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year."

Section 2. Section 16-11-404, MCA, is amended to read:

"16-11-404. Attorney fees and costs. (1) In an action under 16-11-403(2)(c), the court, upon a finding that a tobacco product manufacturer has failed to comply with its obligations under 16-11-403(1) or (2)(a), shall award the attorney general the expenses incurred in investigating the claim, the costs of suit, and reasonable attorney fees. In cases in which outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general for attorney fees and expenses in prosecuting the action. In all other cases, the attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(2) Investigation expenses, attorney fees, and costs recovered under this section are allocated to the department of justice for deposit in the attorney general's major litigation account and may be used by the attorney general for any purpose for which funds appropriated to that account may be used. ~~The funds are statutorily appropriated as provided in 17-7-502.~~ (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)"

Section 3. Section 16-11-502, MCA, is amended to read:

"16-11-502. Definitions. As used in this part, the following definitions apply:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any use of a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning provided in 16-11-402.

(3) "Department" means the department of revenue.

(4) "Master Settlement Agreement" has the meaning provided in 16-11-402.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning provided in section II(jj) of the Master Settlement Agreement defined in 16-11-402 and all amendments thereto.

(7) “Qualified escrow fund” has the meaning provided in 16-11-402.

(8) “Tobacco product manufacturer” has the meaning provided in 16-11-402.

(9) “Units sold” has the meaning provided in 16-11-402.

(10) “Wholesaler” means a person that is authorized to affix tax insignia to packages or other containers of cigarettes under 16-11-113, ~~or any~~ a person that is required to remit the tobacco tax imposed on cigarettes pursuant to 16-11-111, ~~or a person that is required to remit the tobacco tax imposed on other tobacco products under 16-11-202.~~ (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 4. Section 16-11-503, MCA, is amended to read:

“16-11-503. Certifications. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a certification to the director of the department and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with ~~16-11-403 parts 4 and 5 of this chapter and any rules adopted pursuant to 16-11-511.~~

(2) A participating manufacturer shall include in its certification a list of its brand families.

(3) (a) A nonparticipating manufacturer shall include in its certification a list of all of its brand families, the number of units sold in the state during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year.

(b) The certification must indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(c) The certification must identify by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) A tobacco product manufacturer shall update its list of brand families 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the director of the department.

(5) A nonparticipating manufacturer shall further certify:

(a) that the nonparticipating manufacturer is registered to do business in the state and has appointed an agent for service of process and has provided notice as required by 16-11-506;

(b) that the nonparticipating manufacturer has:

(i) established and continues to maintain a qualified escrow fund; and

(ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) that the nonparticipating manufacturer is in full compliance with 16-11-403 and this section and any rules adopted pursuant to 16-11-403 and this section;

(d) (i) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by 16-11-403 and all rules adopted pursuant to 16-11-403;

(ii) the account number of the qualified escrow fund and any subaccount number for the state of Montana;

(iii) the amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the provisions of this subsection (5)(d)(iii); and

(iv) the amounts and dates of any withdrawal or transfer of funds that the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to 16-11-403 and all rules adopted pursuant to 16-11-403.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of 16-11-403.

(7) This part may not be construed to limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payment under the Master Settlement Agreement or for purposes of 16-11-401 through 16-11-403.

(8) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other similar information relied upon for its certifications for a period of 5 years unless otherwise required by law to maintain them for a longer period of time. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 5. Section 16-11-507, MCA, is amended to read:

“16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 or 16-11-203 and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. *All information submitted by a wholesaler or tobacco product manufacturer under this section must be full, complete, and accurate.* (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 6. Section 16-11-509, MCA, is amended to read:

“16-11-509. Penalties and other remedies. (1) In addition to any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated 16-11-505 or any rule adopted pursuant to that section, *the department may revoke or suspend* the license of the wholesaler ~~may be revoked or suspended~~ in the manner provided by 16-11-144 in a proceeding ~~brought initiated by the department or by~~ *at the request of* the attorney general. For each violation of 16-11-505, a civil penalty in the amount of \$250 for the first full or partial pack and \$10 for each additional full or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation of 16-11-505 may be imposed. Each tax insignia affixed, ~~and each offer to sell cigarettes, and each pack sold, offered for sale, or possessed for sale~~ in violation of 16-11-505 constitutes a separate violation. The penalty may be imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney general.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of 16-11-505 may be considered contraband under 16-11-147. The cigarettes are subject to seizure and forfeiture as provided in 16-11-147, and all cigarettes seized and forfeited must be destroyed and not resold.

(3) The attorney general may seek an injunction to restrain a threatened or actual violation of 16-11-505 or 16-11-507(1) or (4) by a wholesaler and to compel the wholesaler to comply with those sections.

(4) (a) In any action brought pursuant to this part, the prevailing party is entitled to recover the costs of the action and reasonable attorney fees calculated as provided in 16-11-404. If the state is the prevailing party, its recoverable costs must include the state’s costs of investigation of the violation.

(b) *In cases in which the state is the prevailing party and outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general's office for attorney fees and expenses in prosecuting the action. In all other cases in which the state is the prevailing party, the state's attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau of the department for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.*

(5) (a) It is unlawful for a person to:

(i) sell, offer for sale, or distribute cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505; or

(ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505.

(b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

(6) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created by Article XII, section 4, of the Montana constitution.

(7) *Penalties, investigation expenses, attorney fees, and costs recovered under parts 4 and 5 of this chapter are allocated to the department of justice for deposit in the major litigation account and may be used for any purpose for which funds deposited in that account may be used. [The funds are statutorily appropriated, as provided in 17-7-502, to the department of justice.]*

(7)(8) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of this state. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 7. Section 16-11-511, MCA, is amended to read:

“16-11-511. Rules. The attorney general may adopt rules necessary to implement *part 4* and this part. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 8. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312;

10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; ~~16-11-509~~; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; ~~16-11-404~~; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362;

80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 10. Effective dates. (1) [Sections 1 and 3 through 7 and this section] are effective on passage and approval.

(2) [Sections 2, 8, 9, and 11] are effective July 1, 2005.

Section 11. Contingent voidness. If the general appropriations act approved by the 59th legislature appropriates at least \$75,639 for fiscal year 2006 and at least \$72,618 for fiscal year 2007 to the department of justice for personal services, equipment, and operating expenses for a full-time attorney position for the purpose of conducting enforcement matters related to the tobacco settlement agreement described in 16-11-401, then [section 2], the bracketed language in [section 6], and [sections 8 and 9] are void.

Approved April 21, 2005

CHAPTER NO. 325

[HB 170]

AN ACT MAKING TECHNICAL CORRECTIONS TO THE LAW ON FUND TRANSFERS RELATING TO CERTAIN VEHICLE TAXES AND FEES; CLARIFYING THE YEARS IN WHICH MONEY FOR THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT AND FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IS ALLOCATED; CLARIFYING THE APPLICATION OF THE \$2 ANNUAL SEARCH AND RESCUE SURCHARGE; CLARIFYING THAT VEHICLE COUNTS NECESSARY FOR CERTAIN CALCULATIONS BE DETERMINED FOR VEHICLES EVEN IF VEHICLE REGISTRATION OCCURRED PRIOR TO JANUARY 1, 2004; AMENDING SECTION 15-1-122, MCA, AND SECTION 50, CHAPTER 592, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b) \$0 in fiscal years 2004 and 2005;~~

~~(c)~~(a) \$3,050,205 in fiscal year 2006; and

~~(d)~~(b) in each succeeding fiscal year, the amount in subsection ~~(2)(c)~~ (2)(a), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and

23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account, provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-517;

(ii) \$2 a year for each snowmobile ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently

registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 2. Section 50, Chapter 592, Laws of 2003, is amended to read:

“**Section 50. Applicability.** [This act] applies to:

(1) *registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;*

(2) *vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004.”*

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004.

Approved April 21, 2005

CHAPTER NO. 326

[HB 173]

AN ACT ALLOWING THE DEPARTMENT OF MILITARY AFFAIRS TO USE THE SEARCH AND RESCUE SURCHARGE MONEY IN THE STATE SPECIAL REVENUE ACCOUNT BOTH DURING THE FISCAL YEAR WHEN THE MONEY IS DEPOSITED AND DURING THE FOLLOWING FISCAL YEAR; AMENDING SECTION 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-601, MCA, is amended to read:

“**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in ~~this code~~ Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) ~~At the end of each fiscal year, Any money deposited in the special revenue account in a fiscal year is available for reimbursement of search and rescue missions and to provide matching funds during the fiscal year when the money is deposited and during the following fiscal year. After this period, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department.~~

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 327

[HB 204]

AN ACT CHANGING THE PURPOSE FOR WHICH THE DEPARTMENT OF JUSTICE MAY USE EXAMINATION COSTS PAID BY A MANUFACTURER SEEKING THE EXAMINATION AND APPROVAL OF A NEW VIDEO GAMBLING MACHINE OR ASSOCIATED EQUIPMENT OR A MODIFICATION TO AN APPROVED MACHINE OR ASSOCIATED EQUIPMENT; DELETING THE STATUTORY APPROPRIATION OF THE COSTS TO THE DEPARTMENT; AMENDING SECTIONS 17-7-502 AND 23-5-631, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; ~~23-5-631~~; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 2. Section 23-5-631, MCA, is amended to read:

"23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. A licensed manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the state prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the

completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) ~~are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments must be deposited in an account in the state special revenue fund and used to administer this part and for other purposes provided by law.~~

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department."

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 328

[HB 211]

AN ACT CLARIFYING THE TERM OF THE SUPREME COURT; AMENDING SECTION 3-2-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-303, MCA, is amended to read:

"3-2-303. Terms Term of supreme court. ~~(1) Four terms of the~~ *The supreme court must be held may have only one term each year at. The term must be held at the seat of government; commencing and must commence on the first Tuesdays of March, June, October, and December day of January.*

~~(2) The chief justice or any two justices have power to call a special term at any time."~~

Section 2. Effective date. [This act] is effective January 2, 2006.

Approved April 21, 2005

CHAPTER NO. 329

[HB 213]

AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS GOVERNING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS, THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT, AND THE LOCAL POLICE OFFICERS' RETIREMENT FUNDS; CLARIFYING TERMINOLOGY RELATED TO

TERMINATION OF SERVICE AND EMPLOYMENT; REFINING THE DEFINITION OF "VESTED"; CLARIFYING SERVICE CREDIT IN MORE THAN ONE SYSTEM; CHANGING THE HOURS THAT MAY BE WORKED WHEN A RETIREE RETURNS TO WORK; PROVIDING FOR CORRECTIONS TO SERVICE PURCHASE ERRORS; DELETING THE BAN ON ESTABLISHING A NEW ACCOUNT FOR AN ALTERNATE PAYEE; CLARIFYING ELIGIBILITY TO APPLY FOR DISABILITY BENEFITS; CLARIFYING EDUCATION PROGRAM REQUIREMENTS; DELETING THE USE OF COVERED PAYROLL TERMINOLOGY REGARDING EMPLOYER CONTRIBUTIONS; CLARIFYING THE DEFINITION OF "COMPENSATION"; REVISING OPTIONAL MEMBERSHIP ELECTION PROVISIONS; CLARIFYING EMPLOYER PAYMENTS FOR EMPLOYEE SERVICE PURCHASES; CLARIFYING DISABILITY BENEFITS FOR PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS WHO JOINED BEFORE FEBRUARY 24, 1991; CLARIFYING SURVIVORSHIP PAYMENT OPTIONS; CLARIFYING RETIREMENT BENEFIT PAYMENT OPTION 4; CLARIFYING CERTAIN PROVISIONS IN THE DEFINED CONTRIBUTION RETIREMENT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CORRECTING AN OVERSIGHT TO ALLOW MEMBERS OF THE JUDGES' RETIREMENT SYSTEM TO PURCHASE MILITARY SERVICE; REVISING THE ELECTION OF GUARANTEED ANNUAL BENEFIT PROVISIONS IN THE JUDGES' RETIREMENT SYSTEM; ELIMINATING A PROVISION IN CERTAIN SYSTEMS THAT CONFLICTED WITH OTHER SYSTEMS' PROVISIONS REGARDING PAYMENTS TO MINOR CHILDREN; ELIMINATING A REQUIREMENT THAT FIRE DISTRICTS HAVE CERTAIN INSURANCE RATINGS IN ORDER FOR VOLUNTEER FIREFIGHTERS TO GET SERVICE CREDIT; REVISING CATCHUP PROVISIONS OF THE DEFERRED COMPENSATION PLAN; REVISING THE DEADLINE BY WHICH LOCAL POLICE FUND INFORMATION MUST BE SUBMITTED TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; COORDINATING DEPARTMENT OF JUSTICE PROVISIONS REGARDING INJURY AND REASSIGNMENT OF HIGHWAY PATROL OFFICERS WITH THE DISABILITY PROVISIONS OF THE HIGHWAY PATROL OFFICES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-2-502, 19-2-602, 19-2-703, 19-2-704, 19-2-706, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-112, 19-3-201, 19-3-316, 19-3-318, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-908, 19-3-1002, 19-3-1005, 19-3-1015, 19-3-1204, 19-3-1501, 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2114, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2126, 19-5-103, 19-5-402, 19-5-404, 19-5-410, 19-5-701, 19-5-902, 19-6-301, 19-6-402, 19-6-404, 19-6-505, 19-6-709, 19-7-301, 19-7-403, 19-7-404, 19-7-801, 19-7-1001, 19-8-301, 19-8-502, 19-8-504, 19-8-801, 19-9-301, 19-9-703, 19-9-710, 19-9-804, 19-9-902, 19-9-905, 19-9-1202, 19-9-1207, 19-9-1208, 19-13-301, 19-13-605, 19-13-802, 19-13-805, 19-17-108, 19-17-407, 19-19-205, 19-50-103, 19-50-104, 44-1-515, AND 44-1-518, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in

19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who ~~is not an active or retired member~~ terminates service and does not retire or take a refund of the member's accumulated contributions.

(25) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

(a) ~~been~~ terminated from service ~~for at least 30 days~~; and

(b) ~~has~~ received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment", "*termination from employment*", "*terminated employment*", "*terminated from employment*", or "~~termination of service~~" "*terminate employment*", or "*terminates employment*" means that: the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination

(a) *there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and*

(b) *the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.*

(47) "*Termination of service*", "*termination from service*", "*terminated from service*", "*terminated service*", "*terminating service*", or "*terminates service*" means that:

(a) *there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;*

(b) *the member is no longer receiving compensation for covered employment; and*

(c) *the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.*

(47)(48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(48)(49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's

beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member's contribution account;
- (b) the vested portion of the employer's contribution account; and
- (c) the member's account for other contributions.

~~(49)~~(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(50)~~(51) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 2. Section 19-2-502, MCA, is amended to read:

"19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership."

Section 3. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member ~~whose service has been discontinued~~ *who has terminated service*, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who ~~terminates from~~ *has terminated* service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible ~~after termination~~ without a written application being filed by the member.

(3) A nonvested member who ~~terminates from~~ *has terminated* service with accumulated contributions of \$200 to \$5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible ~~after termination~~, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or *by a member who is terminating member service and is eligible to receive a refund of \$200 or more of accumulated contributions*, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section

401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient.”

Section 4. Section 19-2-703, MCA, is amended to read:

“19-2-703. No duplication of benefits for same period of service. (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same period of service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.”

Section 5. Section 19-2-704, MCA, is amended to read:

“19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to ~~contribute amounts in addition to the mandatory employee contributions required by the member’s retirement system~~ *make additional contributions* to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member’s employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member’s employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the *additional* contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective *additional* contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the ~~employee~~ *employee's additional* contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any *additional* contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).

(7) If a member terminates ~~service~~ *employment* or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid ~~as of the date of termination~~ unless further payment is made as provided in this subsection. In the case of a termination *from employment*, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 6. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service credit for *active* member involuntarily terminated from ~~service~~ *employment*. (1) ~~An~~ *The provisions of subsection (3) apply to an employee of the state or university system is entitled to the involuntary termination provision provided in subsection (2) if:*

(a) the employee is ~~a~~ *an active* member of the public employees', game wardens' and peace officers', sheriffs', *firefighters' unified*, or highway patrol officers' retirement system;

(b) the ~~employee's active service employee is~~ *has* involuntarily ~~terminated from employment~~ because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a *member who is a legislator*, ~~because of term limits terminating the service of the legislator~~ *the legislator is terminated from office* in either one of the houses of the legislature *because of term limits*;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives ~~termination~~ *the rights and* benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, ~~or 19-8-904, or 19-13-405~~. The employer-paid portion must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased ~~by the terminated employee~~.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). ~~A~~ *The* member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in ~~a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system~~ forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term “same jurisdiction” means all agencies of the state, including the university system.”

Section 7. Section 19-2-903, MCA, is amended to read:

“19-2-903. Adjustment of errors in payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

- (a) adjustment of subsequent payments from a member or an employer;
- (b) installment payments or a lump-sum payment from an employer; or
- (c) a lump-sum payment or a rollover from a member.

(2) *If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:*

(a) adjusting the subsequent lump-sum or installment payments from the member or the member’s employer;

(b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or

(c) granting the member service credit proportional to the amount actually paid.

~~(2)(3) If any fraudulent change or any inadvertent mistake in records fraud or error results in any a member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and, if necessary, equitably adjust the payments to the member, survivor, or beneficiary in an equitable manner.”~~

Section 8. Section 19-2-907, MCA, is amended to read:

“19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant’s rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) “family law order” means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant’s payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) “participant” means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee’s rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee’s rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may ~~not~~ be established for an alternate payee, *but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.*

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.”

Section 9. Section 19-2-908, MCA, is amended to read:

“19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any *active or inactive* member *who is vested*, or the member’s statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before ~~terminating service~~ *termination from employment*, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the *service* retirement benefit may commence on the first day of the month following the eligible member’s last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official’s term of office expires before the 15th day of the month, the official may elect that *service* retirement benefits from a defined benefit plan commence on the first day of the month following the official’s last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official’s term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member’s termination from ~~service~~ *employment*.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.”

Section 10. Section 19-2-909, MCA, is amended to read:

“19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant’s support obligation.

(2) For purposes of this section, the following definitions apply:

(a) “Execution” means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when

providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may ~~not~~ be established for an alternate payee, *but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.*

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The

alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 11. Section 19-3-108, MCA, is amended to read:

"19-3-108. (Temporary) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) ~~the payments or contributions made in lieu of wages for an individual subject pursuant to 19-3-403(4)(a) for members of a bargaining unit;~~

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service, *except as otherwise provided in subsection (6)(b) or (6)(c).*

(b) ~~For or, with respect to~~ a member who has attained 65 years of age but has not served at least 36 months, *highest average compensation means* total compensation earned divided by the number of months the member has served.

(c) *For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.*

(d) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon

termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103.

19-3-108. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) ~~the payments or contributions made in lieu of wages for an individual subject pursuant to 19-3-403(4)(a) for members of a bargaining unit;~~

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service, *except as otherwise provided in subsection (6)(b) or (6)(c).*

(b) ~~For or, with respect to~~ a member who has attained 65 years of age but has not served at least 36 months, *highest average compensation means* total compensation earned divided by the number of months the member has served.

(c) *For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.*

(d) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon

termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 12. Section 19-3-112, MCA, is amended to read:

"19-3-112. Education fund established — allocation of employer contributions — educational program requirements. (1) (a) The board shall establish an education fund ~~and provide for educational programs for to be used to educate and inform~~ system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational ~~services~~ and communication ~~programs~~ established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of ~~covered payroll~~ *the compensation paid to all of the employer's employees who are members of the system* must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational ~~programs~~ *services* must provide system members with impartial and balanced information about plan choices, *benefits, and features*. The ~~programs~~ *services* must ~~involve multimedia~~ *be provided in a variety of formats*. Plan comparisons must, to the greatest extent possible, be based upon ~~real~~ *historical* rates of return on investments or *benefits* available in each retirement plan.

(b) If ~~an educational program is~~ *services are* conducted by a contractor, the board shall monitor the performance of the contract to ensure that the ~~program is~~ *services are* conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide ~~the educational services pursuant to this section~~ *program provided for in subsection (3)* may not be the same entity contracted to provide other services for the defined contribution plan or the optional retirement program.

(3) The board shall ~~provide for an initial and offer~~ an ongoing transfer educational program to provide *new* system members with information necessary to make informed plan choice decisions. The ~~transfer educational~~ program must include but is not limited to information on:

(a) ~~determining~~ the amount of money available ~~to a member~~ to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the ~~aggregate~~ rate of return from investments in the defined contribution plan ~~and the period of time over which the aggregate rate of return~~ *that* must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, *assuming the same time period in each plan*;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

~~(f) the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;~~

~~(g) use of supplemental retirement savings programs to enhance retirement income;~~

~~(g)(h)~~ the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

~~(h)(i)~~ payout options available in each of the retirement plans.

(4) ~~An ongoing~~ Ongoing educational services and communication program services must provide be provided after members of either plan have made their initial retirement plan choice. These services must continually provide members with information necessary to make informed decisions about choices within their chosen plan of membership and in preparation, alternatives within their chosen plan, and decisions necessary for retirement preparation. The program services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) *planning for retirement, including* coordination of contributions and benefits with ~~a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code~~ supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status; and

~~(f) planning for retirement.~~

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a *contracted* plan vendor or vendors from providing system members with information *and tools* necessary to ~~make informed decisions about the defined contribution plan or the optional retirement program and understand the available~~ investment alternatives within the defined contribution plan or the optional retirement program *and to appropriately manage their selected retirement plan."*

Section 13. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of *chapter 2 and* this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution ~~giving notice~~ of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be ~~by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, within 20 40 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.~~

(b) The contract must specify that ~~all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the provisions of the retirement system is compulsory for apply to all employees who are included under the contract and who are on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.~~

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. ~~Groups of excluded employees may be subsequently included by amendment. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.~~

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract

until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.”

Section 14. Section 19-3-316, MCA, is amended to read:

“19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), ~~the amount of the employer contribution as a percentage of the employer's covered payroll is~~ *shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees, except those properly excluded from membership.* Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate ~~applied to their monthly covered payrolls~~ under 19-3-319.”

Section 15. Section 19-3-318, MCA, is amended to read:

“19-3-318. Credit of employer contribution contributions made after termination member becomes inactive. ~~Employer contributions~~ *Contributions made on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system; they are considered to be inactive members, as provided in 19-3-403(4),* must be credited to the employer.”

Section 16. Section 19-3-319, MCA, is amended to read:

“19-3-319. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation ~~of members employed by~~ *paid to all employees of* local government entities and school districts on and after July 1, 1997, *except those properly excluded from membership.* The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502.”

Section 17. Section 19-3-401, MCA, is amended to read:

“19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) ~~(a) An inactive member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.~~

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment

consists of only the member's accumulated contributions and not the employer's contributions.

(3) *(a) A An inactive member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement plan.*

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) A Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who employment; or

(b) terminates one service employment but remains employed in another service or subsequently reenters service is an active member position covered by the system.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."

Section 18. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, ~~solely for the purposes of making regular contributions, as permanently separated from service with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions.~~ Exclusion under this subsection is subject to the following exceptions:

(a) ~~When The employees of an employer who has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or involving a multiemployer pension plan qualified by the internal revenue service for its employees, the employees and that requires contributions by the employer for the members of the~~

bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

Section 19. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in subsection (2), the following employees *and elected officials* in covered ~~employment may positions shall elect either to~~ become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board ~~within 180 days of commencement of their employment in the manner prescribed in subsection (3):~~

(a) elected officials of the state or local governments who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or,

if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b).

~~(c) (i) A member who is a local elected official and an active member on April 17, 2003, and who is working in the member's elected position less than 960 hours in a calendar year may, until January 1, 2004, decline optional membership with respect to the member's elected position.~~

(ii) A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) ~~(a) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.~~

~~(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.~~

~~(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.~~

~~(d) The employer shall file the statement with the board and retain a copy of the statement employee's or elected official's written application.~~

~~(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.~~

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

~~(4)(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.~~

~~(5)(7) Membership~~ Except as provided in subsection (2)(c), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

~~(6)(8) (a) An employee or elected official who declines membership while employed in~~ for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was ~~a member~~ employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. ~~However, if~~

(c) ~~If~~ the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

~~(7)~~(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

~~(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."~~

Section 20. Section 19-3-505, MCA, is amended to read:

"19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit *and membership service*. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase of ~~service credit~~ under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay ~~the amount all contributions that the member and the member's employer would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c).~~

(c) The employer shall establish a policy as to the payment of retroactive employer contributions *or retroactive employer contributions and regular interest* and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) *If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment."*

Section 21. Section 19-3-908, MCA, is amended to read:

"19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or ~~whose service who~~ is involuntarily terminated *from service* because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal

service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated *from service* because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated *from service*, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination *from service*, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 22. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in ~~19-3-1008(1)~~ 19-3-1008.

(2) An active member who is 60 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3)."

Section 23. Section 19-3-1005, MCA, is amended to read:

"19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any *active or inactive* member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application with the board. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed, by any other person on behalf of the member, or by the board upon its own motion. The application must be filed within 4 months after the member's termination from ~~service~~ *employment* unless the member is disabled continuously from the date of termination from ~~service~~ *employment* to the date of the application."

Section 24. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees

with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer ~~terminates~~ *forfeits* any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the ~~member's service~~ *member* is considered, for the purposes of 19-2-602, to have ~~been discontinued terminated service~~ coincident with the commencement of the member's retirement benefit."

Section 25. Section 19-3-1204, MCA, is amended to read:

"19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a lump-sum death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) ~~The A~~ designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a lump-sum *death* payment ~~of the member's account~~.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 26. Section 19-3-1501, MCA, is amended to read:

“19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. ~~The~~ An optional retirement benefit is initially payable during the member’s or designated beneficiary’s lifetime, with a subsequent benefit, *depending on the option selected*, to a contingent annuitant as follows:

(a) option 2—a continuation of the ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee’s death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board before the end of a period certain, determined as follows:~~

(i) *the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:*

(A) *a 10-year period certain if the member retired at 75 years of age or younger; or*

(B) *a 20-year period certain if the member retired at 65 years of age or younger;*

(ii) *if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee’s benefit on a share and share alike basis.*

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient’s contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member’s written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member’s optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member’s marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:

(i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 27. Section 19-3-2104, MCA, is amended to read:

"19-3-2104. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title, ~~including rules concerning the following:~~

~~(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;~~

~~(b) the treatment of dormant or inactive accounts;~~

~~(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;~~

~~(d) minimum asset, reserve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and~~

~~(e) the commencement of benefits in the plan pursuant to this part and as provided in 19-2-908."~~

Section 28. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months

after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of

the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 29. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system—amount available to transfer—effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the

optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 30. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was ~~a system~~ *an active member of the system* on the day before the effective date of the defined contribution plan and who elects to transfer to the plan:

(i) *for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and*

(ii) *for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount*

equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of membership service, the percentage of the employer contributions that may be transferred are as follows:

Years of membership service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been ~~credited~~ *allocated* to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest from the month that the contributions were received.

(3) *For an employee who was an inactive member of the defined benefit plan on the date that the defined contribution plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan:*

(a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received."

Section 31. Section 19-3-2116, MCA, is amended to read:

"19-3-2116. Vesting — mandatory termination of membership — forfeitures. (1) A member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan.

(2) A member's employer contribution account includes the employer's contributions and the income on those contributions and is vested only when the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates ~~covered employment service~~ after becoming a vested member may terminate plan membership as provided in 19-3-2123.

(5) A member who terminates ~~covered employment service~~ before becoming a vested member shall terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

(6) If the member's employer contribution account is not vested upon termination of ~~covered employment plan membership, as provided in 19-3-2123~~, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117."

Section 32. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) ~~Each plan member's retirement account must be credited with the~~ *The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.*

(2) Subject to adjustment by the board as provided in 19-3-2121, ~~beginning on the plan's effective date,~~ of the employer contributions under 19-3-316 *received on or after July 1, 2002*, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; ~~and~~

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); ~~and~~

~~(3)(d) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.~~

~~(4)(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."~~

Section 33. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the ~~covered payroll compensation paid to all of the~~ members in the defined benefit plan, divided by the ~~covered payroll compensation paid to all of the~~ members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 34. Section 19-3-2126, MCA, is amended to read:

"19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates ~~from~~ service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible ~~after the member's termination~~ without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates ~~from~~ service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible ~~after the member's termination~~. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a ~~terminating~~ member *terminating service* whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to the eligible retirement plan.

(5) A member who terminates service with an account balance greater than \$5,000, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 35. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judges and justices and inactive vested members for duty. (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any

duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

(i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

(ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily ~~terminated~~ *discontinued* service as an active judge after 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year."

Section 36. Section 19-5-402, MCA, is amended to read:

"19-5-402. Member's contribution. (1) Each member shall contribute ~~into the fund a sum equal to member's contribution is~~ 7% of the member's monthly compensation ~~beginning on the first day of the member's term.~~

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 37. Section 19-5-404, MCA, is amended to read:

"19-5-404. Contributions by state ~~State employer contribution.~~ (1) Except as provided in subsection (2), the state of Montana shall contribute ~~monthly to the pension trust fund a sum equal to pay as employer contributions~~ 25.81% of the compensation of each member ~~paid to all of the employer's employees, except those properly excluded from membership.~~

(2) The state of Montana shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the

judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 38. Section 19-5-410, MCA, is amended to read:

"19-5-410. Application to purchase military service credit. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(3)(b)~~ A member is not eligible to purchase *active* military service credit and membership service under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 39. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. ~~The~~ An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, *depending on the option selected*, to a contingent annuitant as follows:

(a) option 2—a continuation of the ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board before the end of a period certain, determined as follows:~~

(i) *the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:*

(A) *a 10-year period certain if the member retired at 75 years of age or younger; or*

(B) *a 20-year period certain if the member retired at 65 years of age or younger;*

(ii) *if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share and share alike basis.*

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 40. Section 19-5-902, MCA, is amended to read:

"19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001 2005; and

~~(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.~~

(4) The board ~~shall~~ may adopt rules to administer the provisions of this section.

(5) The decision of a member who *previously* elected to participate under 19-5-901 *or this section* remains valid. The decision of a member who *previously* elected not to participate under 19-5-901 *or this section* may be reversed under this section."

Section 41. Section 19-6-301, MCA, is amended to read:

"19-6-301. Membership — inactive vested members — inactive nonvested members. (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) (a) ~~An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.~~

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) ~~(a) A~~ An inactive member with less than 5 years of membership service ~~who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 42. Section 19-6-402, MCA, is amended to read:

"19-6-402. Member's contribution. (1) (a) A member not covered under 19-6-710 shall contribute ~~into the pension trust fund~~ 9% of the member's ~~monthly~~ compensation.

(b) A member covered under 19-6-710 shall contribute ~~to the pension trust fund~~ 9.05% of the member's ~~monthly~~ compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's highest average compensation in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 43. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's State employer contribution. The state of Montana shall ~~annually contribute to the pension trust fund an amount equal to pay as employer contributions~~ 36.33% of the total compensation paid to the members ~~all of the employer's employees, except those properly excluded from membership~~ from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

Section 44. Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made ~~to the child's appointed guardian for the child's use pursuant to 19-2-803.~~

(4) If a retired member dies without a surviving spouse or dependent child, the member's designated beneficiary must be paid the amount, if any, of the retired member's accumulated contributions minus the total of any retirement benefits already paid from the member's account."

Section 45. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until ~~the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding following the member's termination from service in the covered position.~~

(4) The amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 46. Section 19-7-301, MCA, is amended to read:

“19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs’ retirement system.

(b) A sheriff who was a member of the public employees’ retirement system on July 1, 1974, may remain a public employees’ retirement system member or elect to become a member of the sheriffs’ retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs’ retirement system.

(b) An investigator who was a member of the public employees’ retirement system on July 1, 1993, may remain in the public employees’ retirement system or elect to become a member of the sheriffs’ retirement system by filing a written election with the board at any time before retirement.

(3) A member of the public employees’ retirement system who begins employment in a position covered by the sheriffs’ retirement system may remain in the public employees’ retirement system or may elect to become a member of the sheriffs’ retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(4) A sheriff or investigator who elects to become a member of the sheriffs’ retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(5) ~~(a) A An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member’s accumulated contributions~~ is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member’s accumulated contributions and not the employer’s contributions.

(6) ~~(a) A An inactive member with less than 5 years of membership service who terminates service and leaves the member’s accumulated contributions in the pension trust fund~~ is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member’s accumulated contributions.”

Section 47. Section 19-7-403, MCA, is amended to read:

“19-7-403. Member’s contributions deducted. (1) Each member shall contribute into the pension trust fund *member’s contribution is 9.245% of the member’s monthly compensation, which must be deposited to the member’s credit in the pension trust fund.*

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's highest average compensation in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 48. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) The employer shall pay monthly 9.535% of each member's gross the compensation into the pension trust fund created by this chapter paid to all of the employer's employees, except those properly excluded from membership.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation."

Section 49. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the ~~appropriate reduction in the retirement benefit for an~~ optional retirement benefit, *if any*, elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be ~~made to the child's appointed guardian for the child's use paid pursuant to 19-2-803.~~ If there is more than one dependent child, upon ~~each~~ a child no longer qualifying as dependent under 19-9-104, ~~the that child's pro rata benefits to that child must cease and be paid to the remaining dependent children until all the children are no longer dependent.~~

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 50. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. ~~The~~ An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, *depending on the option selected*, to a contingent annuitant, as follows:

(a) option 2—a continuation of the ~~reduced-amount optional retirement benefit~~ after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced-amount optional retirement benefit~~ after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board before the end of a period certain, determined as follows:~~

(i) *the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:*

(A) *a 10-year period certain if the member retired at 75 years of age or younger; or*

(B) *a 20-year period certain if the member retired at 65 years of age or younger;*

(ii) *if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share and share alike basis.*

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of the a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 51. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, ~~shall must~~ become and *shall* remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) ~~(a) A An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) ~~(a) A An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 52. Section 19-8-502, MCA, is amended to read:

"19-8-502. Member's contribution. (1) ~~Each member is required to contribute into the pension trust fund member's contribution is 10.56% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.~~

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's highest average compensation in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 53. Section 19-8-504, MCA, is amended to read:

"19-8-504. State employer's Employer's contribution. ~~Each month, state employers~~ *The employer shall pay to the pension trust fund a sum equal to as employer contributions* 9% of the ~~total~~ compensation paid to ~~their covered all of the employer's employees, except those properly excluded from membership.~~ The department of fish, wildlife, and parks shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 54. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the actuarial equivalent of the original benefit. ~~The~~ *An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:*

(a) option 2—a continuation of the ~~reduced-amount optional retirement benefit~~ after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced-amount optional retirement benefit~~ after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board before the end of a period certain, determined as follows:~~

(i) *the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:*

(A) *a 10-year period certain if the member retired at 75 years of age or younger; or*

(B) *a 20-year period certain if the member retired at 65 years of age or younger;*

(ii) *if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share and share alike basis.*

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 55. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) ~~(a) A An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.

~~(5) (a) A An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 56. Section 19-9-703, MCA, is amended to read:

"19-9-703. Employer contribution. Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. ~~The employer's contribution, which must be paid monthly to the board, is~~ employer shall pay as employer contributions 14.41% of the compensation paid to all active members of the employer's employees, except those properly excluded from membership."

Section 57. Section 19-9-710, MCA, is amended to read:

"19-9-710. Member's contribution. (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

- (a) on or before June 30, 1975, is 5.8%;
- (b) after June 30, 1975, is 7%;
- (c) after June 30, 1979, but before July 1, 1997, is 8.5%; and
- (d) on and after July 1, 1997, is 9%.

~~(2) A member covered under 19-9-1009 or 19-9-1010 shall pay a contribution rate equal to contribute 9% of the member's compensation received.~~

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 58. Section 19-9-804, MCA, is amended to read:

"19-9-804. Amount of service retirement benefit — continuation of benefit after death of member. (1) A member who is eligible for service retirement must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) (a) Upon the death of a member receiving a service retirement benefit, the member's surviving spouse, if there is one, must receive a benefit equal to the amount of the member's benefit at the time of the member's death.

(b) If the member leaves one or more dependent children, then upon the member's death, if there is no surviving spouse, or upon the death of the surviving spouse, the member's surviving dependent child or children collectively if there are more than one must receive the same monthly payments that a surviving spouse would receive for as long as the child or one of the children remains a dependent child as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use *paid pursuant to 19-2-803*. If there is more than one dependent child, upon ~~each~~ a child no longer qualifying as dependent under 19-9-104, ~~the that child's~~ pro rata payments ~~to that child must cease and be made to the remaining dependent children until all the children are no longer dependent.~~

Section 59. Section 19-9-902, MCA, is amended to read:

"19-9-902. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to a disability retirement benefit, regardless of the length of the member's service, commencing on the day following the member's termination from ~~service employment.~~

Section 60. Section 19-9-905, MCA, is amended to read:

"19-9-905. Reinstatement upon termination of disability benefit. (1) (a) Except as provided in subsection (1)(b), a retired member whose disability retirement benefit is canceled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in a comparable pay and benefit category with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been canceled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the ~~retired~~ *inactive* member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the ~~retired~~ *inactive* member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly."

Section 61. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated ~~employment~~ *service* and retired, multiplied by each month of the DROP period that the participant completes, plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated ~~employment~~ *service* and retired.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 62. Section 19-9-1207, MCA, is amended to read:

"19-9-1207. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating ~~covered employment~~ *service*, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit."

Section 63. Section 19-9-1208, MCA, is amended to read:

"19-9-1208. Distribution of DROP benefit. (1) Upon termination of ~~covered employment~~ service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 64. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) ~~(a) An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) ~~(a) An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system."

Section 65. Section 19-13-605, MCA, is amended to read:

"19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available for this purpose. ~~The employer's contribution is~~ employer shall pay as employer contributions 14.36% of the total compensation paid to members ~~all of the employer's employees, except those properly excluded from membership.~~ All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 66. Section 19-13-802, MCA, is amended to read:

"19-13-802. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to receive a disability retirement benefit, regardless of the length of the member's service, beginning the first day after the date on which the member became disabled and terminated ~~service~~ employment because of the disability."

Section 67. Section 19-13-805, MCA, is amended to read:

"19-13-805. Reinstatement upon termination of benefit. (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of ~~this~~ *the* notice, the member's termination of ~~employment~~ *service* is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly."

Section 68. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor; *and*

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; ~~and~~

~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."~~

Section 69. Section 19-17-407, MCA, is amended to read:

"19-17-407. Exemption from taxation and legal process. (1) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

(2) ~~Except as provided in 19-2-907 and 19-2-909, benefits~~ *Benefits* received under this part are not subject to execution, garnishment, attachment, or any other process.”

Section 70. Section 19-19-205, MCA, is amended to read:

“19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the public employees’ retirement board before ~~October~~ *September* 1 of each odd-numbered year all information requested by the public employees’ retirement board necessary to complete an actuarial valuation of the city’s police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected by the public employees’ retirement board. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the public employees’ retirement board shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed \$6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund.”

Section 71. Section 19-50-103, MCA, is amended to read:

“19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and no deferral of income under the deferred compensation program may affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant’s beneficiary because of ~~separation~~ *severance* from ~~service~~ *employment*, retirement, or unforeseeable emergency. For purposes of this chapter, any qualified private pension plans now in existence qualify.”

Section 72. Section 19-50-104, MCA, is amended to read:

“19-50-104. Eligibility to catch up — normal retirement age. ~~For (1)~~ *Except as provided in subsection (2), for* the purposes of determining a participant’s eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(1)(a) the age at which the participant is eligible to retire pursuant to the participant’s Title 19 retirement system because of the participant’s age, length of service, or both, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(2)(b) ~~60~~ 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) *An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(i)(I), may either:*

(a) *designate a normal retirement age for the qualified police or firefighters that is no less than 40 years of age; or*

(b) *allow a qualified police or firefighter participant to designate a normal retirement age that is between 40 and 70 1/2 years of age.*

(3) *Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:*

(a) *police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;*

(b) *police who are members of a local police retirement system provided for in Title 19, chapter 19;*

(c) *firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;*

(d) *firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and*

(e) *firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3."*

Section 73. Section 44-1-515, MCA, is amended to read:

"44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions ~~he that the chief~~ has received, may determine at any time that an injured officer is able to perform light ~~police~~ duty consistent with ~~his the officer's~~ status as a law enforcement officer and may order ~~that the officer be~~ assigned to ~~such the~~ light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 ~~shall must~~ be discontinued.

(2) The chief may order ~~an that the~~ injured officer be transferred from the ~~highway patrol position covered under the highway patrol officers' retirement system to another position within the department of justice that is not covered under the highway patrol officers' retirement system.~~ An officer may decline to accept a transfer under this subsection with no loss of salary benefit."

Section 74. Section 44-1-518, MCA, is amended to read:

"44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 ~~shall must~~ be credited to the length of service computed for retirement purposes under 19-2-701.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all or any portion of the officer's length of service credited with the ~~Montana highway patrol officers' retirement system must be transferred to the public employees' retirement system according to 19-2-715. in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account must be transferred to the public~~

employees' retirement account in the officer's credit. The state's "~~adjusted contributions~~" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system."

Section 75. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 330

[HB 299]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR DEPARTMENT OF TRANSPORTATION EQUIPMENT STORAGE BUILDINGS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 7], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, or furnishing for the projects authorized in [section 2].

(2) "Other funding sources" means money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Appropriation of bond proceeds and other funds. The amount of \$5,100,000 is appropriated from other funding sources to the department of administration for capital projects, described as statewide equipment storage buildings for the department of transportation, contingent upon the respective authorization of general obligation long-range building program bonds by the 59th legislature and the sale of bonds by the board of examiners.

Section 3. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding \$5,100,000 for the capital projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

Section 4. Agreement with department of transportation. The board of examiners and the department of transportation may enter into an agreement for the construction of equipment storage buildings, under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the state treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the

reserves not required for construction costs may be credited against the department's payment obligation. Payment by the department must be made from available funds.

Section 5. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 6. Capital projects — contingent funds. If the capital projects authorized in [section 2] are financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the department of transportation has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2007 biennium long-range building program presented to the 59th legislature.

Section 7. Legislative consent. The appropriation authorized in [section 2] constitutes legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 8. Requirement for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 331

[HB 324]

AN ACT CREATING THE CRIME OF OBSTRUCTING HEALTH CARE FACILITY ACCESS.

WHEREAS, the Montana Legislature recognizes that access to health care facilities to obtain medical counseling and treatment is imperative for the citizens of this state; and

WHEREAS, the exercise of a person's right to protest or counsel against a medical procedure must be balanced against the right of other persons to obtain medical counseling and treatment in an unobstructed manner; and

WHEREAS, preventing the knowing obstruction of a person's access to medical counseling and treatment at a health care facility is a matter of statewide concern; and

WHEREAS, the Montana Legislature declares that it is appropriate and necessary to enact legislation prohibiting a person from knowingly obstructing another person's entry into or exit from a health care facility.

Be it enacted by the Legislature of the State of Montana:

Section 1. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

(2) A person convicted under this section shall be fined an amount not to exceed \$100.

(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, and the provisions of Title 45, chapter 8, apply to [section 1].

Approved April 21, 2005

CHAPTER NO. 332

[HB 346]

AN ACT ALLOWING CERTAIN RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO WORK WHILE CONTINUING TO RECEIVE A PENSION BENEFIT; PRESCRIBING ELIGIBILITY CRITERIA; AMENDING SECTIONS 19-17-102, 19-17-401, AND 33-22-136, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(8) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(9) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(10) "Member" means a volunteer firefighter who has service credited under this chapter.

(11) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(12) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(13) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(14) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(15) "Surviving spouse" means the spouse married to a member when the member dies.

(16) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(17) "Volunteer firefighter" means a person who is an active member of an eligible fire company, *except a retired member who has returned to voluntarily serve with a fire company as provided in 19-17-401(5)*, and is not compensated for services as a firefighter."

Section 2. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) *A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire department without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit.*

Section 3. Section 33-22-136, MCA, is amended to read:

"33-22-136. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter. (1) Any insurer, health service corporation, or health maintenance organization issuing group disability coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102, or a retired volunteer firefighter who voluntarily returns to serve with a fire company under 19-17-401(5) shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. This section also applies to a state employee group insurance program, a university system group insurance program, an employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement not regulated by the Employee Retirement Income Security Act of 1974 that provides coverage for a peace officer, game warden, firefighter, or volunteer firefighter. Except as provided in subsection (2), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of 33-22-523(2) and (3). The provisions of this subsection are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(2) A disability insurance issuer subject to the provisions of subsection (1) may discontinue or not renew the coverage of a spouse or dependent only if:

(a) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the disability insurance coverage or if the disability insurer has not received timely premium payments;

(b) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the disability insurance issuer is ceasing to offer coverage in the group disability market in accordance with applicable state law."

Section 4. Coordination instruction. If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void.

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 333

[HB 436]

AN ACT ALLOWING A SUBDIVIDER TO DONATE LAND TO A SCHOOL DISTRICT, SUBJECT TO APPROVAL OF THE LOCAL GOVERNING BODY AND ACCEPTANCE BY SCHOOL DISTRICT TRUSTEES, TO FULFILL PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; AND AMENDING SECTIONS 7-16-2324 AND 76-3-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2324, MCA, is amended to read:

“7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of chapter 8, part 25, and this section, lands dedicated to the public use for park or playground purposes under 76-3-621 ~~or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county~~ are considered county lands *unless conveyance to a governmental unit other than a county is provided by law or agreement.*

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25, and this section.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county’s outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and

(f) comply with any other applicable requirements under chapter 8, part 25.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.”

Section 2. Section 76-3-621, MCA, is amended to read:

“76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), ~~and (6), and (7) through (8)~~ of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses

sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

~~(8)~~(9) For the purposes of this section:

(a) “cash donation” is the fair market value of the unsubdivided, unimproved land; and

(b) “dwelling unit” means a residential structure in which a person or persons reside.

~~(9)~~(10) A land donation under this section may be inside or outside of the subdivision.”

Approved April 21, 2005

CHAPTER NO. 334

[HB 440]

AN ACT PROVIDING THAT ADMINISTRATIVE RULES OF THE
DEPARTMENT OF AGRICULTURE INCLUDE A REQUIREMENT THAT

THE OWNER OF AN ANHYDROUS AMMONIA TANK PLACE A LOCK ON THE TANK; PROVIDING THAT A VIOLATION FOR NOT INSTALLING A TANK LOCK MUST BE CONSIDERED A MINOR OFFENSE FOR A CERTAIN PERIOD OF TIME; PROVIDING FOR AN ANHYDROUS AMMONIA TANK LOCK PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 80-10-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-10-503, MCA, is amended to read:

“80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. ~~Such~~ The rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules ~~shall~~ must require the owner to place ~~his~~ the owner's name, ~~and~~ the owner's phone number, and a lock on ~~his~~ the owner's anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules.

(4) (a) *Subject to subsection (4)(b), for purposes of 80-10-303, a violation of the requirement for having a lock on an anhydrous ammonia tank must be considered a minor violation.*

(b) *If the department is not appropriated enough funds to purchase tank locks for all of the tanks owned by retail vendors in Montana, the department shall disburse the locks in a fair and equitable manner and keep a record of those who received locks and those who did not. Those that did not receive a lock may not be found in violation for the purposes of 80-10-303.”*

Section 2. Anhydrous ammonia tank lock program — purpose — account. (1) The purpose of the anhydrous ammonia tank lock program is to distribute high quality tank locks to retail vendors of anhydrous ammonia to prevent theft of anhydrous ammonia for the purpose of making methamphetamine.

(2) The department shall purchase and distribute anhydrous ammonia tank locks to retail vendors of anhydrous ammonia in Montana. The department shall ensure 100% distribution and shall encourage 100% use by June 30, 2007.

(3) Whenever possible, the Montana state university cooperative extension service is encouraged to promote the use of anhydrous ammonia tank locks by agriculture producers and retail vendors of anhydrous ammonia.

(4) There is an account in the state special revenue fund to the credit of the department for the purposes of this section. The department may accept donations from any private source and place the donations in the account. Money in the account must be expended by the department for implementing the anhydrous ammonia tank lock program.

Section 3. Appropriation. There is appropriated \$80,000 for the biennium ending June 30, 2007, from the general fund to the department of agriculture to fund the purchase and distribution of anhydrous ammonia locks.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 80, chapter 10, part 5, and the provisions of Title 80, chapter 10, part 5, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Termination. [This act] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 335

[HB 450]

AN ACT REVISING THE LAWS GOVERNING THE ADMINISTRATION OF STATE LAND; PROVIDING FOR CONSIDERATION OF CERTAIN LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS WHEN CERTAIN SALES OF LAND ARE PROPOSED OR MADE; AMENDING SECTIONS 77-1-202, 77-1-904, AND 77-2-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The board shall administer this trust to:

(a) secure the largest measure of legitimate and reasonable advantage to the state; and

(b) provide for the long-term financial support of education.-

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value of the land after an appraisal by a qualified land appraiser."

Section 2. Section 77-1-904, MCA, is amended to read:

"77-1-904. Commercial leasing authorized. (1) State trust land may be leased for a term not to exceed 99 years for commercial purposes to the highest

and best bidder responding to a department request for proposals for commercial uses of a specified tract.

(2) The board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

(3) A request for proposals for the commercial leasing of state trust land must reserve the board's right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the board.

(4) *The board and the department, when preparing plans or proposals under this part, shall implement review criteria in consideration of the following local government provisions except to the extent that the provisions violate Article X, section 4 or 11, of the Montana constitution:*

(a) *a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;*

(b) *zoning regulations;*

(c) *subdivision review as provided in Title 76, chapter 3;*

(d) *annexation;*

(e) *plans for the extension of services; and*

(f) *other actions related to local planning."*

Section 3. Section 77-2-310, MCA, is amended to read:

"77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall that in the opinion of the board may be sold for residential or commercial purposes must before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions. thereto, conforming as nearly as may be with Except to the extent that the following provisions violate Article X, section 4 or 11, of the Montana constitution, the board and the department shall consider the ordinances of such the appropriate city or town or the resolutions of the appropriate county regarding the platting of additions thereto:

(a) *a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;*

(b) *zoning regulations;*

(c) *subdivision review as provided in Title 76, chapter 3;*

(d) *annexation;*

(e) *plans for the extension of services; and*

(f) *other actions related to local planning.*

(2) The board ~~must~~ shall cause correct maps and plats of such the lands to be made and recorded ~~when so after being surveyed and not otherwise. No A fee shall may not be charged by the county recorder or by any city officer for filing or recording such the maps or plats when recorded on behalf of the state.~~

(2)(3) Before the lands so surveyed and laid off are offered for sale the same shall lands must be appraised, with a separate appraisal to be placed on each lot.

~~Such~~ The surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.”

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 336

[HB 451]

AN ACT AUTHORIZING ISSUANCE BY LOCAL GOVERNMENTS OF BONDS FOR THE CONSTRUCTION AND CONSTRUCTION ENGINEERING PHASES OF PROJECTS ON THE URBAN HIGHWAY SYSTEM; AUTHORIZING THE TRANSPORTATION COMMISSION TO ENTER INTO CONTRACTS WITH LOCAL GOVERNMENTS TO USE FEDERAL URBAN FUND APPORTIONMENT TO SECURE THE PAYMENT OF THE BONDS; AMENDING SECTION 60-2-127, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, 23 U.S.C. 122, as amended by section 311 of the National Highway System Designation Act of 1995 (NHS Act), makes bond-related costs eligible for federal reimbursement on any eligible federal-aid project; and

WHEREAS, under the NHS Act, states and local governments can issue bonds to fund federal-aid projects that are payable from future federal-aid highway funds; and

WHEREAS, these financing mechanisms are referred to as grant anticipation revenue vehicles (GARVEE) or grant anticipation notes (GANS); and

WHEREAS, the Montana Department of Transportation has funded urban transportation improvements through federal-aid highway funds apportioned to the urban highway system under section 60-3-211, MCA; and

WHEREAS, it is the intention of this legislation to allow eligible local governments to issue GARVEE bonds or GANS to construct approved urban projects and commit funds apportioned to the urban highway system under section 60-3-211, MCA, by the Department of Transportation to their repayment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of bonds. (1) Upon approval by the Montana transportation commission, a city, county, or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:

(a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;

(b) make a deposit to a reserve fund securing the bonds; and

(c) pay costs of issuance and sale of the bonds.

(2) The bonds may be authorized by a resolution adopted by the governing body of the bond issuer without need for authorization by the electors of the bond issuer. The resolution must establish the terms, covenants, and conditions of the

bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

(3) The bonds are payable from and secured by the grants or other funds payable to and received by the department of transportation and apportioned by the department of transportation to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2). In the resolution or the trust indenture providing for the issuance of the bonds, the governing body of the issuer shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the department of transportation in an amount sufficient to pay the principal of and the interest on the bonds as due.

(4) Bonds may be issued under this section only if:

(a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued under this section does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body of the issuer in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

(5) Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the transportation commission through an agreement with the issuer in accordance with 60-2-127(4), and the proceeds to be used for the construction must be deposited with the department of transportation. The proceeds must be expended by the department of transportation in accordance with other applicable provisions of law.

(6) A city, county, or consolidated city-county government issuing bonds pursuant to this section shall certify to the director of the department of transportation and the director of the department of administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds.

(7) The powers conferred on a city, county, or consolidated city-county government by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local laws. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling.

Section 2. Section 60-2-127, MCA, is amended to read:

“60-2-127. Allocation of funds for projects. (1) Each year, out of federal-aid highway funds available for construction purposes, the commission shall allocate a portion of the funds for projects located on:

(a) the national highway system;

- (b) the primary highway system;
- (c) the secondary highway system;
- (d) the urban highway system; and
- (e) state highways.

(2) In making allocations under subsection (1), the commission shall comply with all applicable provisions relating to the use of federal-aid highway funds contained in Title 23, U.S.C.

(3) Notwithstanding the allocations made available to the secondary and urban highway systems in subsection (1), the commission may, with the concurrence of the appropriate local officials, authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program.

(4) *The commission may enter into an agreement with a city, county, or consolidated city-county government, under terms and conditions that the commission determines necessary, to allow the city, county, or consolidated city-county government recipient of urban funds apportioned under 60-3-211 to dedicate all or a portion of the urban fund apportionment to the retirement of the bonds authorized by [section 1].*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 7, part 1, and the provisions of Title 7, chapter 7, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2006.

Approved April 21, 2005

CHAPTER NO. 337

[HB 470]

AN ACT REQUIRING APPLICANTS TO PAY COSTS AND FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; AMENDING SECTIONS 75-1-202, 75-1-205, 75-1-207, 75-1-208, 75-2-104, 75-2-211, 75-10-922, 75-20-201, 75-20-216, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427, 82-4-436, 85-2-124, AND 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-202, MCA, is amended to read:

“75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees ~~which shall that must~~ be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 ~~and the agency has not made the finding under 75-1-205(1)(a).~~ An agency ~~must~~ ~~shall~~ determine ~~within 30 days after a completed application is filed~~ whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this ~~part~~ ~~section~~ *within any statutory timeframe for issuance of the lease, permit,*

contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. The Except as provided in 85-2-124, the fee assessed under this part section shall may be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment."

Section 2. Section 75-1-205, MCA, is amended to read:

"75-1-205. Use Collection and use of fees and costs. (1) *A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible for paying:*

(a) the agency's costs of preparing the environmental impact statement and conducting the environmental impact statement process if the agency makes a written determination, based on material evidence identified in the determination, that there will be a significant environmental impact or a potential for a significant environmental impact; or

(b) a fee as provided in 75-1-202 if the agency does not make the determination provided for in subsection (1)(a).

(2) Costs payable under subsection (1) include:

(a) the costs of generating, gathering, and compiling data and information that is not available from the applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact statement, and the final environmental impact statement;

(b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the draft environmental impact statement;

(c) the costs of attending meetings and hearings on the environmental impact statement, including meetings and hearings held to determine the scope of the environmental impact statement; and

(d) the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under subsection (1) include:

(a) payments to contractors hired to work on the environmental impact statement;

(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and

(c) travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement.

(4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.

(b) *If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.*

(c) *Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:*

(i) *the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be gathered and studies that must be conducted.*

(ii) *the agency shall prepare the environmental impact statement within a reasonable time determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall prepare the environmental impact statement within any timeframe provided by statute or rule.*

(iii) *the applicant shall make periodic advance payments to cover work to be performed;*

(iv) *the agency may order work on the environmental impact statement to stop if the applicant fails to make advance payment as required by the agreement. The time for preparation of the environmental impact statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.*

(v) (A) *if the agency determines that the actual cost of preparing the environmental impact statement will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact statement, the agency shall submit proposed modifications to the agreement to the applicant;*

(B) *if the applicant does not agree to an extension of the time for preparation of the environmental impact statement, the agency may initiate the informal review process under subsection (4)(d). Upon completion of the informal review process, the agreement may be amended only with the consent of the applicant.*

(C) *if the applicant does not agree with the increased costs proposed by the agency, the applicant may refuse to agree to the modification and may also provide the agency with a written statement providing the reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.*

(d) *If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency*

may initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the environmental impact statement provided in the agreement is tolled from the date of submission of a request for a review by the appropriate board until the date of completion of the review by the appropriate board. However, the agency shall continue to work on preparation of the environmental impact statement during this period if the applicant has advanced money to pay for this work.

(5) All fees and costs collected under this part ~~shall~~ *must* be deposited in the state special revenue fund as provided in 17-2-102. All fees and costs paid pursuant to this part ~~shall~~ *must* be used as ~~herein~~ *provided in this part*. Upon completion of the necessary work, each agency ~~will~~ *shall* make an accounting to the applicant of the funds expended and refund all unexpended funds without interest."

Section 3. Section 75-1-207, MCA, is amended to read:

"75-1-207. Major facility siting applications excepted. (1) *Except as provided in subsection (2), a* ~~No~~ fee as prescribed by this part may *not* be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20 ~~of this title~~.

(2) *The department may require payment of costs under 75-1-205(1)(a) by a person who files a petition under 75-20-201(5)."*

Section 4. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law.

All time limits are measured from the date the agency receives a complete application. An agency has:

- (i) 60 days to complete a public scoping process, if any;
- (ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4), is required; and
- (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through

preimpact statement studies, separate impact statement evaluations, or permit processing procedures.”

Section 5. Section 75-2-104, MCA, is amended to read:

“75-2-104. Limitations — personal cause of action unabridged — venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.”

Section 6. Section 75-2-211, MCA, is amended to read:

“75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application ~~within:~~

(i) *within 180 days after the department's receipt of a filed application, as provided in subsection (8), ~~if the department prepares the environmental impact statement; if the department prepares the environmental impact statement;~~*

(ii) *within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or*

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, *within* 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application ~~within:~~

(i) *within 180 days after the department's receipt of a filed application, as provided in subsection (8), ~~if the department prepares the environmental impact statement; if the department prepares the environmental impact statement;~~*

(ii) *within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or*

(iii) *if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.*

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 7. Section 75-10-922, MCA, is amended to read:

“75-10-922. Study, evaluation, and report on proposed facility. (1)

After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in *75-1-205(4)* and *75-1-208(4)(b)*, within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.”

Section 8. Section 75-20-201, MCA, is amended to read:

“75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1)

Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or

increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 9. Section 75-20-216, MCA, is amended to read:

“75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

~~(a)~~ the application is in compliance and is accepted as complete; or

~~(b)~~ the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department’s studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department’s certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department’s area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports

to reimburse them for the costs of compiling information and issuing the required report.”

Section 10. Section 75-20-401, MCA, is amended to read:

“75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.”

Section 11. Section 75-20-406, MCA, is amended to read:

“75-20-406. Judicial review of board decisions. (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 12. Section 76-4-125, MCA, is amended to read:

“76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 13. Section 82-4-122, MCA, is amended to read:

"82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application that must contain a reclamation plan for any preparatory work and any other information the department considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan."

Section 14. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and

the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the

department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 15. Section 82-4-337, MCA, is amended to read:

“82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

- (i) sufficient bond has been submitted pursuant to 82-4-338;
- (ii) the information and certification have been submitted pursuant to 82-4-335(9); and
- (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(6) Applications for major amendments must be processed in the same manner as applications for new permits.

(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.”

Section 16. Section 82-4-349, MCA, is amended to read:

“82-4-349. Limitations of actions — venue. (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permit holder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permit holder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 17. Section 82-4-427, MCA, is amended to read:

“82-4-427. Hearing — appeal — venue. (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department’s decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(3) An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permit holder or applicant must include the party to whom the

permit was issued unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 18. Section 82-4-436, MCA, is amended to read:

"82-4-436. Plan amendments — venue. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

- (a) an identification of the existing plan or permit;
- (b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and
- (c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose

needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 19. Section 85-2-124, MCA, is amended to read:

“85-2-124. Fees *Costs and fees for environmental impact statements.*

(1) Whenever the department determines that the filing of an application or a combination of applications for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act ~~and the application or combination of applications involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water and the application or combination of applications involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water~~, the applicant *shall follow the process and* shall pay to the department the ~~fee costs or fees for the environmental impact statement as provided in Title 75, chapter 1, parts 1 and 2 prescribed in this section.~~ The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application or a combination of applications if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant ~~shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as provided in this section. The maximum fee that must be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million.~~ The *fee payment of costs and fees for the environmental impact statement* must be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application or applications. ~~Any amounts paid by the applicant but not actually expended by the department must be refunded to the applicant.~~

(3) ~~The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:~~

~~(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;~~

~~(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any contract;~~

~~(c) the use or nonuse of a fee or any part of a fee paid to the department by an applicant.~~

(4) ~~Any payments made to the department or any third party by an applicant under any contract must be credited against any fee that the applicant is required to pay under this section. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.~~

~~(5)(2)~~ ~~A fee~~ *Costs or fees* as prescribed by this section may not be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of compliance pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the application or applications for permit or approval has been or will be studied by the department pursuant to that act.

~~(6)~~ ~~This section applies to all applications, pending or filed, for which the department has not commenced writing an environmental impact statement. This section does not apply to any application if the fee for the application would not exceed \$2,500.~~

~~(7)(3)~~ Failure to submit the ~~fee~~ *costs or fees* as required by this section voids the application or applications.

~~(8)(4)~~ The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Section 20. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

- (a) an application is not corrected and completed as required by 85-2-302;
- (b) the appropriate filing fee is not paid;
- (c) the application does not document:
 - (i) a beneficial use of water;
 - (ii) the proposed place of use of all water applied for;
 - (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.
 - (iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and
 - (v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:
 - (A) each person who will use the water and the amount of water each person will use;
 - (B) the proposed place of use of all water by each person;
 - (C) the nature of the relationship between the applicant and each person using the water; and
 - (D) each firm contractual agreement for the specified amount of water for each person using the water; or
- (d) the appropriate environmental impact statement ~~fee costs or fees~~, if any, ~~is~~ are not paid as required by 85-2-124."

Section 21. Effective date. [This act] is effective on passage and approval.

Section 22. Applicability. [This act] applies to environmental impact statements on which the agency responsible for preparation commenced preparation after December 31, 2004.

Approved April 21, 2005

CHAPTER NO. 338

[HB 513]

AN ACT EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 6, CHAPTER 590, LAWS OF 2003.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 590, Laws of 2003, is amended to read:

"Section 6. Termination. [This act] terminates January 1, ~~2006~~ 2008."

Approved April 21, 2005

CHAPTER NO. 339

[HB 522]

AN ACT PROVIDING AN APPROPRIATION TO THE BOARD OF REGENTS FOR DISTRIBUTION TO MONTANA STATE UNIVERSITY-BOZEMAN TO CONDUCT A FEASIBILITY STUDY CONCERNING THE TRAINING OF MONTANA DENTAL STUDENTS AT MONTANA STATE UNIVERSITY AND THE UNIVERSITY OF WASHINGTON.

WHEREAS, it is commonly known that Montana suffers from a shortage of dentists, particularly in the more rural areas of the state; and

WHEREAS, the shortage of dentists in Montana has been so longstanding and is so acute that the survey of health professional shortage areas conducted by the Bureau of Health Professions in the U.S. Department of Health and Human Services classifies at least 27 of Montana's counties as "frontier"; and

WHEREAS, Montana's population of practicing dentists is growing older and concern exists in the dental profession in Montana that the supply of dentists is not being replenished; and

WHEREAS, for the medical profession, the state has created the Montana Rural Physician Incentive Program and the Montana Family Practice Residency Program, but no similar programs exist to bring new dentists into the state; and

WHEREAS, because Montana has no dental school of its own it must rely upon dental programs at other educational institutions to provide Montana with graduate dental students; and

WHEREAS, the University of Washington Dental School has proposed a plan whereby Montana resident students at Montana State University in Bozeman, Montana, would complete 1 year of dental training at Montana State University and then transfer to the University of Washington to complete their dental training; and

WHEREAS, under the proposed plan, students graduating from the University of Washington would return to Montana for clinical practice; and

WHEREAS, the proposal by the University of Washington could be coupled with a clinical requirement to bring more Montana graduate dental students back to Montana, in a manner similar to the existing program for physicians; and

WHEREAS, it would be necessary to conduct a feasibility study on the proposal made by the University of Washington, and that study would cost money that should be appropriated by the Montana Legislature as an investment in the future of dental practices and dental access in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for dental school feasibility study. (1)

There is appropriated from the general fund to the board of regents for distribution to Montana state university-Bozeman \$5,000 for each of fiscal years 2006 and 2007 for the purposes of a study as provided in this section.

(2) The study must determine the feasibility of Montana state university making an agreement with the university of Washington dental school to have first-year dental students complete dental courses at Montana state university and then transfer to the university of Washington for completion of dental

education. The plan shall encourage the return of Montana graduates to Montana after completion of their dental education.

(3) A report on the study must be prepared by January 1, 2007. The regents shall present the report to the legislature detailing the manner in which the program would operate and its costs to Montana. The report must be distributed to the legislature in the manner provided in 5-11-210.

Approved April 21, 2005

CHAPTER NO. 340

[HB 591]

AN ACT CLARIFYING THE APPLICABILITY OF LOCAL ZONING REGULATIONS TO SAND AND GRAVEL OPERATIONS AND OPERATIONS THAT MIX CONCRETE OR BATCH ASPHALT; AMENDING SECTION 76-2-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-209, MCA, is amended to read:

"76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431, ~~and 82-4-432, and subsection (2) of this section,~~ a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner ~~thereof of any mineral, forest, or agricultural resource.~~

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel ~~and or an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are~~ subject to the zoning regulations adopted under this chapter ~~may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.~~

(3) *Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel, and may condition an operation that mixes concrete or batches asphalt in all zones other than residential."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 341

[HB 666]

AN ACT RELATING TO COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING PETITIONS BY ALL PROPERTY OWNERS FOR THE CREATION OF A DISTRICT, APPOINTMENT OF DIRECTORS, AND THE INCURRENCE OF INDEBTEDNESS; CLARIFYING THE EFFECT OF PROTESTS AGAINST A METHOD OF LEVYING SPECIAL ASSESSMENTS; CLARIFYING PROTEST REQUIREMENTS AND ASSESSMENT

PROCEDURES FOR CONDOMINIUM PROPERTY; AUTHORIZING THE ISSUANCE OF REVENUE BOND AND SPECIAL ASSESSMENT BOND INDEBTEDNESS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY TO ESTABLISH SUBDISTRICTS; AMENDING SECTIONS 7-13-2204, 7-13-2208, 7-13-2212, 7-13-2215, 7-13-2231, 7-13-2282, 7-13-2302, 7-13-2321, 7-13-2328, AND 7-13-2329, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2204, MCA, is amended to read:

“7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, ~~shall must~~ be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by ~~registered voters within the boundaries of the proposed district equal in number to either at least 10% of the registered voters of the territory included in such the proposed district or by the owners of all of the real property in the district.~~

(2) When the territory to be included in ~~such the~~ proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which ~~said the~~ territory lies. Each of ~~said the~~ petitions must be signed by at least 10% of the registered voters of the territory within ~~said the~~ county to be included within ~~such the~~ proposed district ~~or by the owners of all of the real property included in the proposed district.~~

(3) ~~Such A~~ petition to create a water and/or sewer district ~~shall must~~ set forth and describe the proposed boundaries of ~~such the~~ district and ~~shall pray~~ require that the ~~same district~~ be incorporated under the provisions of *part 23* and this part ~~and part 23.~~”

Section 2. Section 7-13-2208, MCA, is amended to read:

“7-13-2208. Decision on petition — election required. (1) On the final hearing provided for in 7-13-2206, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would ~~be benefited benefit by~~ from the formation of the district. Land that will not, in the judgment of the board of county commissioners, ~~be benefited benefit by~~ from the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether ~~or not~~ the district is to be incorporated. The election must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(3) *An election is not required if the petition for the creation of the district is signed by the owners of all of the real property in the proposed district. If an election is not held, upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries as an organized county water and/or sewer district. The county clerk and recorder shall forward a certified copy of the order to the secretary of state.*”

Section 3. Section 7-13-2212, MCA, is amended to read:

“7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), ~~no~~ *an* individual ~~shall be~~ *is not* entitled to vote at any election under the provisions of *part 23 and this part and part 23* unless ~~such~~ *the* individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which ~~he~~ *the individual* proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of ~~such~~ *the* real property *described in subsection (1)* need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that ~~such~~ *the* elector is qualified if ~~he is~~ registered to vote in any state of the United States and files proof of ~~such~~ registration with the election administrator *at least 20 days prior to the election in which the individual intends to vote.*”

Section 4. Section 7-13-2215, MCA, is amended to read:

“7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2) *or the certified copy of the order referred to in 7-13-2208(3)*, the secretary of state shall, within 10 days, issue ~~his~~ a certificate reciting that the district (naming it) has been ~~duly~~ incorporated according to the laws of the state of Montana. A copy of ~~such~~ *the* certificate ~~shall must~~ be transmitted to and filed with the county clerk of the county or counties in which ~~such~~ *the* district is situated.

(2) From and after the date of ~~such~~ a certificate of incorporation from the secretary of state, the district named ~~therein shall~~ *in the certificate must be deemed considered* incorporated, with all the rights, privileges, and powers set forth in *part 23 and this part and part 23 and necessarily incident thereto.*”

Section 5. Section 7-13-2231, MCA, is amended to read:

“7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of part 23 and this part and the laws governing general elections not inconsistent with part 23 and this part, the district shall elect a board of directors. The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with the next regular or primary election. *If no electors reside in the district at a time when directors of the district are to be elected, the directors to be elected must be appointed in a certificate of appointment presented to the board of directors of the district, signed by the owners of all of the real property in the district, and containing the signed acceptance of the appointment by all of the directors.*

(2) The board of directors is the governing body of the district.”

Section 6. Section 7-13-2282, MCA, is amended to read:

**“7-13-2282. Hearing on assessment—~~who considered owner—~~
~~sufficient protest to bar proceedings.~~** (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution and not later than ~~the~~ July 15 preceding the county’s next fiscal year.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property *except as provided in [section 11]*. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution ~~of intention~~ is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of assessment described in the resolution ~~of intention~~. *A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment."*

Section 7. Section 7-13-2302, MCA, is amended to read:

"7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) ~~If from for any cause reason the revenues revenue of the district shall be is inadequate to pay the interest or principal of any bonded debt as it becomes due, exclusive of revenue or special assessment bonded indebtedness incurred pursuant to [section 12] or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors must shall, (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which such the district is located are required by law to levy the amount of taxes required for county or city and county purposes), furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:~~

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either ~~of said purposes purpose~~, together with a description of the lands benefited ~~thereby by the bonds~~, as stated by the board of directors in the resolution declaring the necessity to incur ~~such~~ bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of ~~such the~~ county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, ~~must shall~~:

(a) until any ~~such~~ bonded debt is fully paid, levy upon the *benefited* lands ~~so benefited and cause to be collected collect~~ the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and ~~cause to be collected~~ *collect* the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the district water and/or sewer tax.

(3) ~~Such taxes~~ *Taxes* for the payment of any ~~such~~ bonded debt ~~shall~~ *must* be levied on the property benefited ~~thereby~~, as stated by the board of directors in the resolution declaring the necessity ~~therefor for the bonds~~, and all taxes for other purposes ~~shall~~ *must* be levied on all property in the territory comprising the district.”

Section 8. Section 7-13-2321, MCA, is amended to read:

“7-13-2321. Procedure to incur bonded indebtedness. (1) Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in ~~7-13-2331~~ *7-13-2332* or revenue or special indebtedness incurred pursuant to [section 12], it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the electors.

(2) *If no electors reside in the district at the time of adoption of the resolution or if the proposition is approved by all of the real property owners in the district to be benefited in a certificate of approval to be presented to the board of directors, the board of directors may incur the bonded indebtedness without an election. The board of directors may by resolution, at times that it considers proper, provide for the form and execution of the bonds and for their issuance.”*

Section 9. Section 7-13-2328, MCA, is amended to read:

“7-13-2328. Sufficient vote required to issue bonds. (1) (a) *When the board of directors canvasses the vote of a bond election, it shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:*

(i) *determine the total number of electors of the district who were qualified to vote at the bond election;*

(ii) *determine the total number of qualified electors who voted at the bond election;*

(iii) *calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).*

(b) *When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.*

(c) *When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.*

(d) *When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.*

(2) If the canvass of the vote establishes the approval and adoption of the bond proposition ~~If from such returns it appears that 60% or more of the votes cast on the question at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part thereof the bonds."~~

Section 10. Section 7-13-2329, MCA, is amended to read:

"7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to 7-13-2321(2) or 7-13-2328 at such times or in such a manner as that it may deem considers to be to the public interest."

Section 11. Protest procedures for property created as condominium — assessment of condominium property. (1) Whenever property created as a condominium is proposed to be assessed for costs of an improvement pursuant to 7-13-2280 and if the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest under 7-13-2282 is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the district in accordance with 7-13-2282 the following:

- (a) a writing identifying the condominium property;
- (b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;
- (c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and
- (d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protect against the method of assessment.

(3) Each holder of title to a unit of a condominium that is proposed to be assessed for costs of a capital project is entitled to the passage of the resolution as provided in 7-13-2281, and if the assessments are levied, assessments must be levied against the units in the condominium as provided in subsection (4).

(4) Whenever property created as a condominium is to be subject to special assessments, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

Section 12. Issuance of revenue or special assessment bonds without election. (1) The board of directors of the district may authorize the issuance of bonds payable from all or a portion of the revenue of the district or from special assessments levied against benefited property in the district to

finance the acquisition, construction, improvement, or extension of any facilities of the district benefiting all or any portion of the district for other authorized corporate purposes of the district, to refund bonds issued for those purposes, to fund a debt service refund for the security of the bonds, to pay interest on the bonds during the estimated period of construction or improvement of facilities, and to pay costs of the bond issuance. Revenue or special assessment bonds issued under this section may be authorized by a resolution adopted by the board of directors of the district without need for authorization by the electors. Bonded indebtedness incurred pursuant to this section may not be secured by the levy of the deficiency tax provided in 7-13-2302 if not submitted to and approved by the electors of the district.

(2) Revenue or special assessment bonds authorized in subsection (1) may be sold as provided in 7-13-2329. The board of directors may, by resolution, pledge to the payment of the revenue bonds or special assessment bonds all or a portion of the rates, fees, tolls, rents, or other charges afforded by or special assessments levied in respect of facilities of the district, whether financed with bonds or other available funds of the district. The pledge may be made on a parity with or with a superior or subordinate lien to the pledge of the revenue to other bonded indebtedness of the district, subject to any covenants made with owners of outstanding bonds of the district. The board of directors may also make covenants for the benefit of the owners of the bonds as provided in 7-13-2301, but the revenue or special assessment bonds may not be secured by the bond tax levied pursuant to 7-13-2302 or any other taxing powers of the district. The bonds do not constitute and may not be included as an indebtedness or liability of the district for purposes of any statutory debt limitation but are subject to the limitations of this section.

(3) Bonds may be issued under this section only if:

(a) the bonds are issued in the principal amounts and on terms that stipulate that the amount of principal and interest due in any fiscal year on the bonds and any other revenue or special assessment bonds of the district and issued under this section do not exceed the amount of the revenue or special assessment pledged to the payment of the bonds and received in that fiscal year as estimated by the board of directors of the district in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not later than 40 years after the date of issuance of the bonds or the useful life of the project financed from the proceeds of the bonds, as determined by the board of directors.

Section 13. Establishment of subdistricts. (1) The board of directors may establish one or more subdistricts within a district to provide for and finance the cost of water or sewer projects, improvements, or extensions that would benefit land in the subdistrict but not other land in the district. Before establishing a subdistrict, the board shall conduct a public hearing on the establishment of the proposed subdistrict after 10 days' notice published in a newspaper of general circulation in the district. The notice of public hearing must contain a description of the subdistrict and the proposed water or sewer project and its estimated cost. After the public hearing, the board of directors may, by resolution, establish the subdistrict if it finds that it is in the best interests of the owners of the land in the subdistrict and the district wishing to establish the subdistrict, that the subdistrict constitutes all land in the district benefited by the proposed water or sewer project, and that the establishment of the subdistrict and the financing of water or sewer projects for the benefit of the

subdistrict will not violate any covenants of the district made with owners of outstanding bonds of the district.

(2) The board shall describe in the resolution establishing the subdistrict the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district and must constitute all of the land in the district benefited by the proposed water or sewer project.

(3) Following the establishment of a subdistrict, the board of directors may undertake and finance water or sewer projects, improvements, or extensions that benefit land in the subdistrict but not other land in the district, as provided in Title 7, chapter 13, parts 22 and 23, including but not limited to the incurrence of bonded indebtedness to finance costs and the levy of special assessments or the imposition of rates and charges, all subject to any covenants made with owners of outstanding bonds of the district. If general obligation bonds are to be issued to finance the costs of the projects, the subdistrict must be treated as the district for the purposes of 7-13-2331.

(4) The powers granted in this section are supplementary to the powers otherwise granted to county water and sewer districts.

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Codification instruction. [Sections 11 through 13] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 11 through 13].

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 342

[HB 684]

AN ACT EXEMPTING VEHICLES TRAVELING ON U.S. HIGHWAY 93 WITHIN 10 MILES OF THE BORDER BETWEEN MONTANA AND CANADA FROM THE WEIGHT LIMITS DETERMINED BY THE FEDERAL BRIDGE FORMULA; VOIDING THE ACT IF THE EXEMPTION WOULD RESULT IN A SANCTION OF FEDERAL HIGHWAY FUNDS; AND AMENDING SECTION 61-10-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-107, MCA, is amended to read:

“61-10-107. Maximum gross weight. (1) (a) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. ~~The~~ *Except as provided in subsection (1)(b), the* maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the department. The department shall adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c, for vehicles operating in Montana.

(b) *A vehicle traveling on U.S. highway 93 from the border between Canada and the United States to 10 miles south of the border is subject to the specific maximum allowable gross weight limit provided in rules adopted by the department but is not subject to maximum gross weight limits determined by the formula in subsection (1)(a).*

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 2. Contingent voidness. (1) If the department of transportation is notified by the federal highway administration that the exemption provided in [section 1(1)(b)] would result in a sanction of federal highway funds, [this act] is void.

(2) The department of transportation shall notify the code commissioner if it receives notification from the federal highway administration, as provided in subsection (1), and shall indicate the date that notification was received.

Approved April 21, 2005

CHAPTER NO. 343

[HB 698]

AN ACT ESTABLISHING A WARM WATER FISHERY ENHANCEMENT ACCOUNT; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ALLOW INDIVIDUALS TO MAKE VOLUNTARY CONTRIBUTIONS TO THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Warm water fishery enhancement account — source of funding — use of account. (1) There is an account to the credit of the department in the state special revenue fund established by 17-2-102 to be known as the warm water fishery enhancement account.

(2) There must be deposited in the account:

(a) a one-time transfer of money from the department in the amount of \$1,000 to start the fund;

(b) proceeds from voluntary contributions.

(3) Money in the account may be used only to fund the enhancement of warm water fisheries and habitats in Montana.

(4) The department shall adopt a process that allows individuals to donate money to the warm water fishery enhancement account by means of a voluntary contribution. Each individual must be provided an opportunity to contribute to the account at the time the individual purchases a fishing license.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 2, and the provisions of Title 87, chapter 3, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 344

[HB 759]

AN ACT ALLOWING REGISTRATION OF CERTAIN FLEETS FOR A 9-MONTH PERIOD; AND AMENDING SECTION 61-3-318, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-318, MCA, is amended to read:

“61-3-318. Fleet registration period. (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its motor vehicles for a 6-month *or a 9-month* period, commencing from the date of original registration.

(b) A vehicle remaining in the fleet at the end of a 6-month *or 9-month* period must be reregistered for a minimum of 12 months.

(2) As used in this section, “fleet” means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet.”

Approved April 21, 2005

CHAPTER NO. 345

[HB 772]

AN ACT CREATING THE CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT; ESTABLISHING A PROGRAM TO MATCH FUNDS RAISED BY NONPROFIT ORGANIZATIONS WITH UP TO \$2,500

FROM INSURERS TO ASSIST CATASTROPHICALLY INJURED WORKERS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ADMINISTER THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the “Catastrophically Injured Worker’s Travel Assistance Act”.

Section 2. Purpose and intent. The purpose of [sections 1 through 4] is to assist catastrophically injured workers and their families by providing that funds raised by community service organizations may be matched with funds from insurers to help the workers and their families defray the costs of travel and lodging expenses incurred by family members or, if a family member is unavailable, by a person designated by the injured worker or approved by the insurer when traveling to be with the worker.

Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) “Catastrophically injured” means a physical injury or occupational disease incurred by a worker to the extent that treatment for the injury or occupational disease:

(a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is in Montana but that is more than 100 miles from the worker’s place of residence; or

(b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is located outside Montana; and

(c) occurs within 90 days of the accident or events causing the worker to be catastrophically injured.

(2) “Community service organization” means a community-based, nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the catastrophically injured worker.

(3) “Worker” has the meaning as provided in 39-71-118.

Section 4. Catastrophically injured worker’s travel assistance program — rulemaking authority. (1) Pursuant to subsection (3), the department of labor and industry shall establish criteria to certify that the funds raised by community service organizations are eligible for matching funds from an insurer.

(2) Money raised by community service organizations to pay travel expenses for a catastrophically injured worker pursuant to this section may not be used by community service organizations to require matching funds by an insurer in an amount greater than \$2,500 for each catastrophic injury.

(3) The department shall adopt rules to administer 39-71-704 and this section.

Section 5. Section 39-71-704, MCA, is amended to read:

“39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate

and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

~~(f)~~ Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

~~(f)~~(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection ~~(1)(f)~~ (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

~~(g)~~(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility or a critical access hospital pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (7), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."

Section 6. Appropriation. There is appropriated \$1,000 from the worker's compensation administration fund to the department of labor and industry for the biennium ending June 30, 2007, to produce information to notify appropriate agencies and groups of the financial assistance available to catastrophically injured workers under the Catastrophically Injured Worker's Travel Assistance Act.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 4].

Section 8. Effective date — applicability. [This act] is effective July 1, 2005, and applies to catastrophic injuries or occupational diseases occurring on or after July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 346

[SB 33]

AN ACT DELETING THE REQUIREMENT THAT THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS PREPARE AND PRESENT A UNIFIED BUDGET TO THE LEGISLATURE AND STANDING AND INTERIM COMMITTEES; AND AMENDING SECTION 2-15-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-225, MCA, is amended to read:

“2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:

- (a) the attorney general provided for in 2-15-501;
- (b) the director of the department of public health and human services provided for in 2-15-2201;
- (c) the superintendent of public instruction provided for in 2-15-701;
- (d) the presiding officer of the Montana children’s trust fund board;
- (e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;
- (f) the administrator of the board of crime control provided for in 2-15-2006;
- (g) the commissioner of labor and industry provided for in 2-15-1701;
- (h) the director of the department of corrections provided for in 2-15-2301;
- (i) the state coordinator of Indian affairs provided for in 2-15-217;
- (j) the adjutant general of the department of military affairs provided for in 2-15-1202;
- (k) the director of the department of transportation provided for in 2-15-2501;
- (l) the commissioner of higher education provided for in 2-15-1506; and
- (m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.

(2) The coordinating council shall perform the following duties:

- (a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;
- (b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;
- (c) study various financing options for prevention programs and services;
- (d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;
- (e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs; *and*
- ~~(f) prepare and present to the legislature and to the appropriate standing and interim legislative committees a unified budget for state prevention programs, which must be published in the governor’s executive budget; and~~
- ~~(g)~~*(f)* develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, “benchmark” means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Approved April 21, 2005

CHAPTER NO. 347

[SB 62]

AN ACT REQUIRING THAT DISPOSITIONS OF CONTESTED CASES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE IN WRITING; AND AMENDING SECTIONS 2-4-603, 2-4-614, 2-4-623, AND 2-4-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings — waiver of administrative proceedings — recording and use of settlement proceeds. (1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. *A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.*

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then ~~utilize~~ use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision."

Section 2. Section 2-4-614, MCA, is amended to read:

"2-4-614. Record — transcription. (1) The record in a contested case ~~shall~~ *must* include:

- (a) all pleadings, motions, *and* intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings ~~thereon~~ *on those objections*;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the ~~hearing~~ *hearings* examiner or agency member presiding at the hearing, *which must be in writing*;
- (g) all staff memoranda or data submitted to the ~~hearing~~ *hearings* examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part ~~thereof shall of the stenographic record must~~ be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription ~~shall~~ *must* be paid by the requesting party."

Section 3. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders — notification — availability. (1) A final decision or order adverse to a party in a contested case ~~shall must~~ be in writing ~~or stated in the record~~. A final decision ~~shall must~~ include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall must~~ be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts ~~shall~~ *fact must* be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law ~~shall must~~ be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall must~~ include a ruling upon each proposed finding.

(5) Parties ~~shall must~~ be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order ~~shall must~~ be delivered or mailed ~~forthwith~~ to each party and to ~~his~~ *the party's* attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such An~~ agency decision or order is *not* valid or effective against any person or party, ~~nor may~~ and it *may not* be invoked by the agency for any purpose until it has been made available for public inspection as ~~herein~~ *required in this section*. This

provision is not applicable in favor of any person or party who has actual knowledge ~~thereof of the decision or order~~ or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.”

Section 4. Section 2-4-702, MCA, is amended to read:

“2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final *written* decision in a contested case is entitled to judicial review under this chapter. This section does not limit ~~utilization~~ *use* of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final *written* decision of the agency or, if a rehearing is requested, within 30 days after the *written* decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner’s principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers’ compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers’ compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency’s decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, ~~27-19-316, and~~ through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be

required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.”

Approved April 21, 2005

CHAPTER NO. 348

[SB 80]

AN ACT PROHIBITING UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER BY A PERSON IN A MOTOR VEHICLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

- (a) in a locked glove compartment or storage compartment;
- (b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;
- (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;
- (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or
- (e) in the immediate possession of a passenger:
 - (i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or
 - (ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Section 2. Definitions. As used in [section 1], the following definitions apply:

(1) “Alcoholic beverage” means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(2) “Bus” means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(3) "Camper" has the meaning provided in 61-1-129.

(4) "Highway" has the meaning provided in 61-1-201, including the shoulders of the highway.

(5) "Motor home" has the meaning provided in 61-1-130.

(6) "Motor vehicle" has the meaning provided in 61-1-102.

(7) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(8) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61 apply to [sections 1 and 2].

Approved April 21, 2005

CHAPTER NO. 349

[SB 86]

AN ACT DEFINING TERMS RELATED TO IMPLEMENTATION OF THE FEDERAL INDIAN CHILD WELFARE ACT; CLARIFYING THE ROLE OF A QUALIFIED EXPERT WITNESS IN CASES INVOLVING INDIAN CHILDREN IN PROCEEDINGS SUBJECT TO THE INDIAN CHILD WELFARE ACT; AND AMENDING SECTIONS 41-3-102, 41-3-205, 41-3-432, 41-3-437, AND 41-3-609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) *In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).*

(e)(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "*Indian child*" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "*Indian child's tribe*" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "*Indian custodian*" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "*Indian tribe*" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

~~(11)~~(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(12)~~(16) "Parent" means a biological or adoptive parent or stepparent.

~~(13)~~(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(14)~~(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(15)~~(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(16)~~(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

~~(17)~~(21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

~~(18)~~(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

~~(19)~~(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "*Qualified expert witness*" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) *a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;*

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

~~(20)~~(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(21)~~(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(22)~~(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(23)~~(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(24)~~(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

~~(25)~~(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(26)~~(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(27)~~(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

~~(28)~~(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(28)~~ (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(29)~~(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, *a qualified expert witness*, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. Section 41-3-432, MCA, is amended to read:

“41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

~~(b)~~(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 4. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

Section 5. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) *If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.*

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 21, 2005

CHAPTER NO. 350

[SB 110]

AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT TO PROVIDE FOR IMPROVED COVERAGE OF THE HEALTH CARE AND RELATED NEEDS OF PARTICULAR GROUPS OF PERSONS; PROVIDING AUTHORITY FOR THE ESTABLISHMENT OF HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION INITIATIVES AND OTHER DEMONSTRATION PROJECTS UPON APPROVAL OF WAIVER OF FEDERAL LAW; AMENDING SECTIONS 53-2-101 AND 53-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana public health care redesign project has studied health care and related services funded with state and federal money and has recommended the implementation of a set of measures to ensure that the expenditure of state and federal money more effectively benefits those citizens who are most in need of health care and other public assistance services; and

WHEREAS, the State of Montana has through the Montana public health care redesign project determined that the implementation of federally authorized health insurance flexibility and accountability (HIFA) demonstration initiatives or other demonstration projects under the waiver authority of section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, is in the best interest of the citizens of Montana; and

WHEREAS, the section 1115 waiver is intended to foster more appropriate use of state general fund money and federal money in funding state-administered health care and related services; and

WHEREAS, the section 1115 waiver would allow for the expansion of coverage for children covered under Title XXI of the Social Security Act, 42 U.S.C. 1397aa, et seq., state children's health insurance program (CHIP), for the expansion of Medicaid coverage for children who cannot be covered through CHIP because of limits on enrollment, for the implementation of new programs of assistance to a significant number of persons in Montana who are chronically unable to obtain health insurance coverage, and for improvements in the funding for and delivery of certain health care services, such as prescription drugs and mental health services to specific populations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-101, MCA, is amended to read:

"53-2-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Needy person" is one who is eligible for public assistance under the laws of this state.

(3) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(5) "*Section 1115 waiver*" means an experimental, pilot, research, or demonstration project, subject to approval by the secretary of the U.S. department of health and human services, authorized by section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, for which certain requirements of the Social Security Act are waived.

(6) "*Section 1915 waiver*" means a waiver of certain medicaid requirements subject to approval by the secretary of the U.S. department of health and human services, under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, for the purposes of managing health care through restrictions on access to providers or for establishing programs of home- and community-based services."

Section 2. Section 53-4-601, MCA, is amended to read:

"53-4-601. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the financial assistance, food stamp, and medicaid programs.

(3) *The department is authorized, in accordance with the provisions of [section 3], to amend the demonstration project authorized under 53-6-101 and*

this part to expand the demonstration project to implement the purposes authorized in [section 3].”

Section 3. Social Security Act section 1115 waiver. (1) The department may pursue approval from the U.S. department of health and human services for implementation in Montana of a health insurance flexibility and accountability demonstration initiative and other demonstration projects through section 1115 waivers.

(2) The department may implement a demonstration project upon approval of a section 1115 waiver by the U.S. department of health and human services. The department may:

(a) coordinate a demonstration project with a program approved through a section 1915 waiver; or

(b) terminate and subsume in a new section 1115 waiver an existing managed care or access program approved through a section 1915(b) waiver, an optional state plan medicaid service authorized under 53-6-101, an optional state plan eligibility group authorized under 53-6-131, or an existing program approved by a section 1115 waiver, inclusive of the demonstration program authorized by 53-4-202 and Title 53, chapter 4, part 6, that is administered by the department.

(3) The department may amend the existing section 1115 demonstration project authorized in 53-4-601 and 53-6-101 to expand the demonstration project to implement the purposes of this section.

(4) The department may initiate and administer section 1115 waivers to more efficiently apply available state general fund money, other available state and local public and private funding, and federal money to the development and maintenance of medicaid-funded programs of health services and of other public assistance services and to structure those programs or services for more efficient and effective delivery to specific populations.

(5) (a) In establishing programs or services in a demonstration project approved through a section 1115 waiver, the department shall administer the expenditures under each demonstration project within the state spending authority that is available for that demonstration project. The department may limit enrollments in each program within a demonstration project, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through each program when the department determines that expenditures can be reasonably expected to exceed the available state spending authority.

(b) The department shall develop a contingency plan if there is a spending cap as a condition of the waiver and the spending cap is exceeded. The contingency plan must address the effects on new programs, services, or eligibility groups.

(6) The department may coordinate the state children's health insurance program authorized under Title 53, chapter 4, part 10, with a section 1115 waiver for the purpose of increasing the state funding match available under the waiver and expanding the number of participants in the state children's health insurance program.

(7) The department, subject to the terms and conditions of the section 1115 waiver:

[(a) shall establish the eligibility groups based upon the funding principles stated in [LC 281];]

(b) may provide medicaid coverage for one or more optional medicaid eligibility groups;

(c) may provide medicaid coverage for one or more specific populations of persons who are not within the federally authorized medicaid eligibility groups but who are within the requirements of subsection (8);

(d) may establish the service coverage, eligibility requirements, financial participation requirements, and other features for the administration and delivery of services to each section 1115 waiver eligibility group;

(e) shall set limits on the number of participants for each section 1115 waiver eligibility group;

(f) shall set limits on the total expenditures under each demonstration project; and

(g) shall set the limits on the total expenditures on the services to be provided to each section 1115 waiver eligibility group.

(8) The categories of persons that the department may consider for establishment as a section 1115 waiver eligibility group include but are not limited to:

(a) low-income parents of children who are eligible to participate in medicaid under 53-6-131 or in the state children's health insurance program authorized under Title 53, chapter 4, part 10;

(b) persons who because of low income and health-care needs are unable to procure health insurance coverage and are eligible to participate in a comprehensive health association plan authorized under Title 33, chapter 22, part 15;

(c) children who, because of limits on enrollment, may not be covered through the state children's health insurance program authorized under Title 53, chapter 4, part 10;

(d) children who are eligible to participate in the state children's health insurance program authorized under Title 53, chapter 4, part 10; and

(e) other specific groups of persons who are participants in programs or services funded solely or primarily through state general funds or who the department determines are in need of specific types of health care and related services, such as prescription drugs, reproductive health care, and mental health services, and are without adequate financial means to procure health insurance coverage of those needs.

(9) Children participating in a section 1115 waiver eligibility group or children who would be eligible to participate in the state children's health insurance program are subject to the eligibility criteria applicable under 53-4-1004, except as provided in subsection (10) of this section, for participation in the state children's health insurance program and must receive benefits as provided through the state children's health insurance program under 53-4-1005.

(10) (a) Except as provided in this subsection (10), the eligibility for the section 1115 waiver eligibility groups may not exceed 150% of the federal poverty level.

(b) The department may establish eligibility at greater than 150% but no more than 200% of the federal poverty level for any of the following groups established for purposes of a section 1115 waiver:

- (i) participants in the state children's health insurance program;
- (ii) participants in a group that may be covered under the state children's health insurance program;
- (iii) participants in a family planning program;
- (iv) participants in a group composed of persons previously served through a program funded with state general fund money and other nonmedicaid money; or
- (v) participants in a group composed of persons with a significant need for particular services that are not readily available to that population through insurance products or because of personal financial limitations.

(c) In establishing the eligibility criteria based upon federal poverty levels, the department shall select levels to ensure that the resulting expenditures will remain within the available funding and will conform with the terms and conditions of approval by the U.S. department of health and human services.

(d) The department may adopt additional programmatic and financial eligibility criteria for a section 1115 waiver eligibility group in order to appropriately define the subject population, to limit use for fiscal and programmatic purposes, to prevent improper use, and to conform the administration of the program with the terms and conditions of the section 1115 waiver.

(e) Eligibility criteria applicable to a section 1115 waiver eligibility group need not conform to the criteria applicable to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within the demonstration project.

(11) (a) For each section 1115 waiver eligibility group, the department shall establish the program benefit or benefits to be available to the participants in the group.

(b) Program benefits may be in the form of:

- (i) assistance in the payment of health insurance premiums for health care coverage through an employer or other existing group coverage available to the program enrollee;
- (ii) assistance in the payment of health insurance premiums for health care coverage that meets a set of defined standards and limitations adopted by the department in consultation with the commissioner of insurance and obtained from participating private insurers or through self-insured pools;
- (iii) premium purchase for insurance coverage on behalf of children who are 18 years of age or younger for the defined set of health care and related services adopted by the department for the state children's health insurance program authorized in Title 53, chapter 4, part 10; or

(iv) coverage of a defined set of health care and related services administered directly by the department on a fee-for-service basis.

(c) The department may limit the types of program benefits available to enrollees in a program. For programs in which the department provides for more than one type of program benefit, the department may require that enrollees, either as a whole or on an individual basis based on certain

circumstances, use certain types of program benefits in lieu of using other types of program benefits.

(d) The department shall, as necessary to maintain expenditures for a program within the available funding for that program, set monetary limitations on the total benefit amounts available on a periodic basis for an enrollee through that program, whether that benefit is in the form of premium assistance, premium purchase, or a set of covered services.

(12) The benefits for a section 1115 waiver eligibility group may be in the form of a defined set of covered services consisting of one or more of the mandatory and optional medicaid state plan services specified in 53-6-101 or other health-care related services. The department may select the types of services that constitute a defined set of covered services for a section 1115 waiver eligibility group. The department may provide coverage of a service not specified in 53-6-101 if the department determines the service to be appropriate for the particular section 1115 waiver eligibility group. The department may define the nature, components, scope, amount, and duration of each covered service to be made available to a section 1115 waiver eligibility group. The nature, components, scope, amount, and duration of a covered service made available to a section 1115 waiver eligibility group need not conform to those aspects of that service as defined by the department for delivery as a covered service to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within a section 1115 waiver.

(13) The department may adopt financial participation requirements for enrollees in a section 1115 eligibility group to foster appropriate use among enrollees and to maintain the fiscal accountability of the program. The department may adopt financial participation requirements, including but not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The requirements may vary among the section 1115 waiver eligibility groups. In adopting financial participation requirements for enrollees selecting coverage as provided in subsection (11)(b)(iv), the department may not adopt cost-sharing amounts that exceed the nominal deductible, coinsurance, copayment, or similar charges adopted by the department to apply to categorically or medically needy persons for a service pursuant to the state medicaid plan.

(14) The department shall adopt rules as necessary for the implementation of a section 1115 waiver. Rules may include but are not limited to:

- (a) designation of programs and activities for implementation of a section 1115 waiver;
- (b) features and benefit coverage of the programs;
- (c) the nature, components, scope, amount, and duration of each program service;
- (d) appropriate insurance products and coverage as benefits;
- (e) required enrollee eligibility information;
- (f) enrollee eligibility categories, criteria, requirements, and related measures;
- (g) limits upon enrollment;
- (h) requirements and limitations for service costs and expenditures;

(i) measures to ensure the appropriateness and quality of services to be delivered;

(j) provider requirements and reimbursement;

(k) financial participation requirements for enrollees;

(l) use measures; and

(m) other appropriate provisions necessary for administration of a demonstration project and for implementation of the conditions placed upon approval of a section 1115 waiver by the U.S. department of health and human services.

(15) The department shall administer the programs and activities that are subject to a section 1115 waiver in accordance with the terms and conditions of approval by the U.S. department of health and human services. The department may modify aspects of established programs and activities administered by the department as may be necessary to implement a section 1115 waiver as provided in this section.

(16) The department may seek an initial duration and durational extensions for a section 1115 waiver as the department determines appropriate for demonstration and fiscal considerations.

(17) The department shall provide a report to the legislature, as provided in 5-11-210, on the conditions of approval and the status of implementation for each section 1115 waiver approved by the U.S. department of health and human services. For any proposed section 1115 waiver not approved by the U.S. department of health and human services, the department shall provide to the next legislative session a report on the basis for disapproval and an analysis of the fiscal costs and programmatic impacts of serving the persons within the proposed section 1115 waiver eligibility groups through eligibility under one of the optional medicaid eligibility categories established in federal law and authorized by 53-6-131.

(18) The department shall present a section 1115 waiver proposal to the appropriate medicaid advisory council, which must include consumer advocates, prior to the submission of the proposal to the federal government.

(19) The department shall present a section 1115 waiver proposal to the house appropriations committee or, during the interim, the children, families, health, and human services interim committee for review and comment at a public hearing prior to the submission of the proposal to the federal government for formal approval and shall also present the section 1115 waiver after final approval from the federal government.

(20) (a) The department shall provide for a public comment period on the proposed section 1115 waiver at least 60 days before the submission of the section 1115 waiver application to the federal government for formal approval.

(b) The department shall give notice of the proposal by announcing the pending submittal, stating its general purpose, and informing the public that information on the proposal is available on the department's website.

(c) The department shall provide for public comment through electronic means or mail and shall provide for a public forum in at least one location at which members of the public can submit views on the proposal. The department shall consider comments received and make any appropriate changes to the waiver request before submitting it to the federal government.

(d) The department shall post on its website the waiver concept paper, formal correspondence regarding a waiver proposal, and the final approved waiver, including documents received from the center for medicare and medicaid services.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [section 3].

Section 5. Coordination instruction. If Senate Bill No. 41 is not passed and approved, then the bracketed language in [section 3] is void.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 351

[SB 122]

AN ACT REGULATING THE TRANSFER OF A BENEFICIARY'S STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 12] may be cited as the "Structured Settlement Protection Act".

Section 2. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Consideration" has the meaning provided in 28-2-801.

(3) "Dependent" means a payee's spouse, a minor child of the payee, or any person for whom the payee is legally obligated to provide support, including spousal maintenance.

(4) "Discounted present value" means the present value of future payments determined by discounting the future payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

(5) "Gross advance amount" means the sum payable to the payee or to the payee's account as consideration for a transfer of a structured settlement

payment right before any reduction for a transfer expense or any other deduction is made from the sum.

(6) "Independent professional advice" means advice of an attorney, a certified public accountant, an actuary, or any licensed professional adviser.

(7) "Interested party" means, with respect to a structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive a payment after the payee's death, the annuity issuer, the structured settlement obligor, or any other party that has a continuing right or obligation under the structured settlement.

(8) "Net advance amount" means the gross advance amount minus the aggregate amount of the actual and estimated transfer expenses required to be disclosed under [section 3(5)].

(9) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of the payment rights.

(10) "Periodic payment" includes both a recurring payment and any scheduled future lump-sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment, as defined for federal tax purposes, of the liability to make periodic payments under a structured settlement.

(12) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(13) "Settled claim" means the original tort claim.

(14) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(15) "Structured settlement agreement" means the written agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(16) "Structured settlement obligor" means, with respect to a structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(17) "Structured settlement payment right" means the right to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, when:

(a) (i) the payee is domiciled in this state; or

(ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(b) a court or responsible administrative authority in this state approved the structured settlement agreement; or

(c) the structured settlement agreement is expressly governed by the laws of this state.

(18) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, or any order or other

approval of a court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

(19) (a) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of a structured settlement payment right made by a payee for consideration.

(b) The term does not include the creation or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution in the absence of any action:

(i) to redirect the structured settlement payment to the insured depository institution or its agent or successor in interest; or

(ii) to otherwise enforce the blanket security interest against the structured settlement payment right.

(20) "Transfer agreement" means the agreement providing for a transfer of a structured settlement payment right.

(21) (a) "Transfer expenses" means all expenses of a transfer that are:

(i) required under the transfer agreement to be paid by the payee; or

(ii) deducted from the gross advance amount, including without limitation any court filing fee, attorney fee, escrow fee, lien recordation fee, judgment and lien search fee, finder's fee, commission, and other payments to a broker or other intermediary.

(b) Transfer expenses do not include a payee's preexisting obligations that are payable on the payee's account from the proceeds of a transfer.

(22) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right through a transfer.

Section 3. Disclosure to payee. No less than 3 days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a written disclosure statement separate from the transfer agreement that sets forth in bold type no smaller than 14 points:

(1) the amounts and the due dates of the structured settlement payment to be transferred;

(2) the aggregate amount of the amounts in subsection (1);

(3) the discounted present value of the payments to be transferred, which must be identified as:

(a) the calculation of the present value of the transferred structured settlement payment under federal standards for valuing annuities; and

(b) the amount of the applicable federal rate used in calculating the discounted present value;

(4) the gross advance amount;

(5) an itemized list of all applicable transfer expenses, other than attorney fees and related disbursements, based on the transferee's best estimate of the amount of fees and disbursements payable in connection with the transferee's application for approval of the transfer;

(6) the net advance amount;

(7) the amount of any penalty or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee; and

(8) a statement that the payee has the right to cancel the transfer agreement without penalty or further obligation no later than the third business day after the date on which the payee signs the agreement.

Section 4. Transfer of structured settlement payment right — conditions. A direct or indirect transfer of a structured settlement payment right is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of a structured settlement payment right unless a final court order or order of a responsible administrative authority has approved the transfer in advance based on written findings by the court or responsible administrative authority that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, if any;

(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and either has received independent professional advice or knowingly waived independent professional advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Section 5. Obligations after transfer. After the transfer of a structured settlement payment right pursuant to [sections 1 through 12]:

(1) the structured settlement obligor and the annuity issuer are discharged and released from liability for the transferred payments to all parties except to the transferee;

(2) the transferee is liable to the structured settlement obligor and the annuity issuer:

(a) if the transfer contravenes the terms of the structured settlement for any tax incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(b) for any other liability or cost, including reasonable costs and attorney fees, arising:

(i) from compliance by the structured settlement obligor and annuity issuer with the order of the court or responsible administrative authority; or

(ii) as a consequence of the transferee's failure to comply with [sections 1 through 12]; and

(3) neither the structured settlement obligor nor the annuity issuer may be required to divide a periodic payment between a payee and a transferee or assignee or between two or more transferees or assignees.

Section 6. Additional transfers. After the transfer of a structured settlement payment right pursuant to [sections 1 through 12], any further transfer by the payee is subject to all of the requirements of [sections 1 through 12].

Section 7. Jurisdiction — notice. (1) A transferee may apply under [sections 1 through 12] for approval of a transfer of a structured settlement payment right:

(a) in the county in which the payee resides;

(b) in the county in which the structured settlement obligor or the annuity issuer maintains a principal place of business; or

(c) in any court or before any responsible administrative authority that approved the structured settlement agreement.

(2) Not less than 20 days prior to a scheduled hearing on an application for approval of a transfer of a structured settlement payment right under [section 4], the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for an authorized transfer. The notice must include the following:

- (a) a copy of the transferee's application;
- (b) a copy of the transfer agreement;
- (c) a copy of the disclosure statement required under [section 3];
- (d) a listing of each of the payee's dependents, if any, together with the age of each dependent;
- (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application either in person or by counsel by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (f) notification of the time and the place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed. The filing deadline may not be less than 15 days after the transferee's notice has been served.

Section 8. Waiver not allowed. A payee may not waive the provisions of [sections 1 through 12].

Section 9. Disputes — entry of judgment. (1) A transfer agreement entered into on or after [the effective date of this act] by a payee who resides in this state must provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, must be determined in this state under the laws of this state.

(2) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

Section 10. Contingent payment conditions. A transfer of a structured settlement payment right may not extend to a payment that is contingent upon the life of a payee unless prior to the date on which the payee signs the transfer agreement the transferee has established and agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

- (1) periodically confirming the payee's survival; and
- (2) giving the annuity issuer and the structured settlement obligor prompt written notice upon the payee's death.

Section 11. Responsibility for compliance — liability. (1) Compliance with the requirements in [section 3] and fulfillment of the conditions in [section 4] are the sole responsibility of the transferee in any transfer of a structured settlement payment right. Neither the structured settlement obligor nor the annuity issuer bears responsibility for or liability arising from noncompliance with [section 3] or failure to fulfill the conditions of [section 4].

(2) A payee who proposes to make a transfer of a structured settlement payment right may not incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee or any

assignee based on a failure of a transfer agreement to satisfy the conditions of [sections 1 through 12].

Section 12. Construction. [Sections 1 through 12] may not be construed to authorize a transfer of a structured settlement payment right in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to [the effective date of this act] is valid or invalid.

Section 13. Applicability. [This act] applies to any transfer of structured settlement payment rights under a transfer agreement executed on or after October 1, 2005.

Approved April 21, 2005

CHAPTER NO. 352

[SB 124]

AN ACT ALLOWING MONEY IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO BE USED TO PAY THE COSTS OF ELIGIBLE PROJECTS ON AN INTERIM BASIS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-715, MCA, is amended to read:

“90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to:

(a) provide matching funds to plan and construct regional drinking water systems in Montana; ~~and to~~

(b) provide funding of administrative expenses for state and local entities associated with regional drinking water systems; or

(c) *pay the costs of eligible projects on an interim basis pending the receipt of grant and loan funds by those systems or entities.* Except for the administrative expenses and payment of the costs of eligible projects on an interim basis provided for in this subsection, each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural

residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of natural resources and conservation for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 353

[SB 127]

AN ACT FACILITATING THE IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT REGARDING PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; REVISING THE STATUTES AUTHORIZING PROGRAMS FOR HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; AUTHORIZING THE LONG-TERM CARE PREADMISSION SCREENING PROCESS; REMOVING AN INAPPROPRIATE APPLICATION OF MEDICAID STATE PLAN AUTHORITY TO THE PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES AND A REQUIREMENT FOR REPORTING COSTS OF PROVIDING HOME AND COMMUNITY-BASED SERVICES TO PERSONS CURRENTLY LIVING IN ASSISTED LIVING FACILITIES; AMENDING SECTIONS 53-6-101, 53-6-401, AND 53-6-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-101, MCA, is amended to read:

“53-6-101. Montana medicaid program — authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., ~~as may be amended~~. The department of ~~public health and human services~~ shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians’ services;

- (f) nurse specialist services;
 - (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
 - (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
 - (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
 - (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
 - (k) health services provided under a physician's orders by a public health department; and
 - (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).
- (3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:
- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
 - (b) home health care services;
 - (c) private-duty nursing services;
 - (d) dental services;
 - (e) physical therapy services;
 - (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
 - (g) clinical social worker services;
 - (h) prescribed drugs, dentures, and prosthetic devices;
 - (i) prescribed eyeglasses;
 - (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
 - (k) inpatient psychiatric hospital services for persons under 21 years of age;
 - (l) services of professional counselors licensed under Title 37, chapter 23;
 - (m) hospice care, as defined in 42 U.S.C. 1396d(o);
 - (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
 - (o) services of psychologists licensed under Title 37, chapter 17;
 - (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
 - (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- (4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance

under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the ~~department of public health and human services~~ may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

~~(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.~~

~~(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."~~

Section 2. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

~~(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.~~

~~(2)~~(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "*Home and community-based services*" means, as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and regulations implementing that statute, long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings and funded by the department with medicaid money.

(3) "*Level-of-care determination*" means an assessment of a person and the resulting determination establishing whether long-term care facility services to be provided to the person are appropriate to meet the health care and related circumstances and needs of the person.

~~(3)~~(4) "Long-term care facilities facility" means facilities a facility that ~~are~~ is certified by the department, as provided in 53-6-106, to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities or, for the purposes of implementation of medicaid-funded programs of home and community-based services, that is recognized by the U.S. department of health and human services to be an institutional setting from which persons may be diverted through the receipt of home and community-based services.

~~(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.~~

~~(5)~~(5) "Long-term care preadmission screening and resident review" means, an evaluation that results in a determination as to in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r, a process conducted according to a specific set of criteria for determining whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities with mental retardation or mental illness may be admitted to a long-term care facility.

(6) "*Persons with disabilities or persons who are elderly*" means, for purposes of establishing home and community-based services, those categories of persons who are elderly and disabled as defined in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."

Section 3. Section 53-6-402, MCA, is amended to read:

"53-6-402. Community-based Medicaid-funded home and community-based services — waivers — funding limitations — populations — services — providers — long-term care facilities preadmission screening — powers and duties of department — rulemaking authority. (1) The department may operate, for persons eligible for medicaid, a program of obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) *The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.*

(3) *The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.*

(4) *The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.*

(5) *The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.*

(6) *The department may consider the following populations or subsets of populations for home and community-based services programs:*

(a) *persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;*

(b) *persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;*

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat the their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(7) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(8) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

- (a) case management services;*
- (b) homemaker services;*
- (c) home health aide services;*
- (d) personal care services;*

(e) *adult day health services;*

(f) *habilitation services;*

(g) *respite care services; and*

(h) *other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.*

(9) *Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.*

~~(2)(10)~~ (a) *The department may conduct long-term care preadmission screenings and resident reviews in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.*

(b) *Long-term care preadmission screenings and resident reviews are required for all ~~medicaid-eligible~~ persons ~~entering seeking admission to a long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid.~~ Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act facility.*

(c) *A person determined through a long-term care preadmission screening to have mental retardation or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.*

(d) *The long-term care preadmission screenings must include a determination of whether the person needs specialized mental retardation or mental health treatment while residing in the facility.*

~~(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).~~

~~(4)(11)~~ *The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of the long-term care preadmission screenings and resident reviews as part of that program screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.*

(12) *The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:*

(a) *the populations or subsets of populations, as provided in subsection (6), to be served in each program;*

(b) *limits on enrollment;*

- (c) *limits on per capita expenditures;*
- (d) *requirements and limitations for service costs and expenditures;*
- (e) *eligibility categories criteria, requirements, and related measures;*
- (f) *designation and description of the types and features of the particular services provided for under subsection (8);*
- (g) *provider requirements and reimbursement;*
- (h) *financial participation requirements for enrollees as provided in subsection (5);*
- (i) *utilization measures;*
- (j) *measures to ensure the appropriateness and quality of services to be delivered; and*
- (k) *other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services.”*

Section 4. Directions to code commissioner. Wherever a reference to “community-based medicaid services” appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to “home and community-based services”.

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 354

[SB 140]

AN ACT ESTABLISHING AN INTRASTATE MUTUAL AID SYSTEM TO AID IN REQUESTING ASSISTANCE FOR AND RESPONDING TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A POLITICAL SUBDIVISION OF THE STATE TO WITHDRAW FROM PARTICIPATION IN THE INTRASTATE MUTUAL AID SYSTEM; CREATING THE MONTANA INTRASTATE MUTUAL AID COMMITTEE AND DESCRIBING ITS MEMBERSHIP, DUTIES, AND AUTHORITY; ALLOWING FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA TO PARTICIPATE IN THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

WHEREAS, a system for statewide mutual aid among the state’s political subdivisions and Indian tribes does not exist; and

WHEREAS, emergencies and disasters transcend political jurisdictional boundaries; and

WHEREAS, the timely commitment of available resources to emergencies and disasters can save lives and protect property; and

WHEREAS, intergovernmental coordination and cooperation are essential for the protection of lives and property during emergencies and disasters; and

WHEREAS, intergovernmental preparation for potential emergencies and disasters is critical to effectively and efficiently respond to actual emergencies and disasters.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 12] may be cited as the “Statewide Mutual Aid System Act”.

Section 2. Policy — purpose. (1) It is the policy of the state that:

(a) available resources should be made available whenever possible and practical to minimize the negative impacts of disasters and emergencies, regardless of the political jurisdiction in this state within which the disaster or emergency occurs and regardless of the political jurisdictions from which a request for assistance arises or from which or to which the resources are made available;

(b) agreements, either formal or informal, written or oral, between or among political subdivisions of this state, that exist or are entered into for the purpose of providing mutual aid in the event of a disaster or emergency should remain options for political subdivisions and should not be infringed upon or in any way affected by the provisions of [sections 1 through 12]; and

(c) in particular, the provisions of [sections 1 through 12] do not affect any mutual aid agreement, either formal or informal, written or oral, that is made or that may be made pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703 or a request for assistance or aid or assistance or aid provided or received pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703.

(2) It is the purpose of [sections 1 through 12] to:

(a) establish an effective and efficient mutual aid system in which a political jurisdiction can choose to participate that can operate separate from yet integrated with other freestanding mutual aid systems or agreements;

(b) provide to political jurisdictions in the state another option for establishing mutual aid agreements and for requesting, providing, and receiving mutual aid; and

(c) allow political jurisdictions maximum flexibility to protect life and property through mutual aid agreements.

Section 3. Statewide mutual aid system — definitions. As used in [sections 1 through 12], the following definitions apply:

(1) “Committee” means the Montana intrastate mutual aid committee created in [section 4].

(2) “Disaster” has the meaning provided in 10-3-103.

(3) “Emergency” has the meaning provided in 10-3-103.

(4) “Member jurisdiction” means a political subdivision or a federally recognized Indian tribe that participates in the system.

(5) "System" means the Montana intrastate mutual aid system provided for in [section 6].

Section 4. Montana intrastate mutual aid committee — members — officers — meetings — compensation. (1) There is a Montana intrastate mutual aid committee.

(2) All members of the committee must be appointed by and serve at the pleasure of the state emergency response commission established in 10-3-1204.

(3) The committee shall elect from among its members a presiding officer, a vice presiding officer, and any other officers considered necessary or advisable by the committee.

(4) The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise considered necessary or advisable by two-thirds of the members.

(5) Members of the committee are not entitled to compensation or to reimbursement for expenses incurred for serving on or participating in the activities of the committee. This subsection does not preclude a member jurisdiction from compensating or reimbursing the expenses of a committee member.

Section 5. Montana intrastate mutual aid committee — duties. The committee shall:

(1) review the progress and status of intrastate mutual aid;

(2) assist in developing methods to track and evaluate activation of the system;

(3) examine issues facing member jurisdictions in the implementation of intrastate mutual aid;

(4) develop, adopt, and disseminate comprehensive guidelines and procedures that address the following:

(a) projected or anticipated costs of establishing and maintaining the system;

(b) checklists for requesting and providing intrastate mutual aid assistance;

(c) recordkeeping for all member jurisdictions; and

(d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid or assistance through the system; and

(5) adopt any other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

Section 6. Intrastate mutual aid system — initial participation — withdrawing. (1) There is a Montana intrastate mutual aid system. The system is composed of and may be described as:

(a) the member jurisdictions and any action taken by a member jurisdiction pursuant to [sections 1 through 12];

(b) the committee and any action taken by the committee pursuant to [sections 1 through 12];

(c) the guidelines and procedures described in [section 5(4)];

(d) any action taken with respect to requesting assistance for an emergency or disaster under [sections 1 through 12]; and

(e) any action taken with respect to responding to a request for assistance for an emergency or disaster under [sections 1 through 12].

(2) Except as provided in subsection (4), every political subdivision of the state is part of the system.

(3) A federally recognized Indian tribe that is located within the boundaries of the state may be a member jurisdiction upon:

(a) adoption by the tribal government of a resolution declaring the tribe's desire to be a member jurisdiction; and

(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(4) A member jurisdiction may elect not to participate or to withdraw from the system upon:

(a) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system; and

(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(5) This section does not preclude a member jurisdiction from entering into any other agreement with another political subdivision and does not affect any other agreement to which a political subdivision is a party or may become a party.

Section 7. Intrastate mutual aid system — request for assistance. (1)

A member jurisdiction may request assistance from another member jurisdiction:

(a) to prevent, mitigate, respond to, or recover from an emergency or disaster; or

(b) in concert with drills or exercises between member jurisdictions.

(2) A request for assistance must be made by or through the presiding officer of the governing body of the member jurisdiction or the chief executive officer or the chief executive officer's designee of a member jurisdiction. A request may be verbal or in writing and is not required to go directly to the division, as defined in 10-3-103. If a request is verbal, the request must be confirmed in writing within 30 days of the date on which the request was made.

Section 8. Intrastate mutual aid system — limitation on assistance — command and control. A member jurisdiction's obligation to provide assistance to prevent, respond to, or recover from an emergency or disaster or in drills or exercises is subject to the following conditions:

(1) A member jurisdiction that responds to a request for assistance from a requesting member jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for the responding jurisdiction.

(2) The personnel of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction for purposes that include medical protocols, standard operating procedures, and other protocols; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

(3) The assets and equipment of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

Section 9. Intrastate mutual aid system — portability of bona fides.

If a person or entity holds a license, certificate, permit, or similar documentation that evidences the person's or entity's qualifications in a professional, mechanical, or other skill and the assistance of the person or entity is requested by a member jurisdiction, the person or entity is:

(1) considered to be licensed, certified, permitted, or otherwise documented in the member jurisdiction that requests assistance for the duration of the emergency or disaster or of the drills or exercises; and

(2) subject to any legal limitations or conditions prescribed by the governing body or chief executive of the member jurisdiction that receives the assistance.

Section 10. Intrastate mutual aid system — reimbursement — dispute resolution. (1) A requesting member jurisdiction shall reimburse each member jurisdiction that responds to a request for aid or assistance and renders aid under the system unless the member jurisdiction rendering aid donates all or a portion of the cost of the assistance to the requesting member jurisdiction.

(2) A request for reimbursement must be in accordance with procedures developed by the committee.

(3) If a dispute regarding reimbursement arises between a party that requested assistance under the system and a party that provided assistance under the system, the involved parties shall make every effort to resolve the dispute within 30 days of written notice of the dispute given by the party asserting noncompliance to the other party.

(4) (a) If the dispute is not resolved within 90 days from the date of the notice, either party may request that the dispute be resolved through arbitration.

(b) All arbitration occurring under this section must be conducted pursuant to the commercial arbitration rules and mediation procedures of the American arbitration association as the rules and procedures exist on the date of notification described in subsection (3).

Section 11. Intrastate mutual aid system — workers' compensation coverage. (1) If a person is an employee of a member jurisdiction that responds to a request for assistance from a member jurisdiction and the person sustains injury in the course of providing the requested assistance, the person is entitled to all applicable benefits, including workers' compensation benefits, normally available to the person as an employee of the member jurisdiction that employs the person.

(2) If the person's injury results in the person's death, the person's estate must receive any additional state and federal benefits that may be available for death in the line of duty.

Section 12. Liability — immunity. (1) All activities performed pursuant to a request for assistance as provided for in [sections 1 through 12] are considered to be governmental functions.

(2) Except as provided in [section 11], a person responding to a request for assistance who is under the operational control of the requesting member jurisdiction, as provided for in [section 8], is considered for the purposes of liability to be an employee of the requesting member jurisdiction.

(3) Except in the case of willful misconduct, gross negligence, or bad faith, the member jurisdiction or an employee of the member jurisdiction is immune from liability for the death of or injury to any person or for damage to property if the member jurisdiction or the employee of the member jurisdiction is complying with or attempting to comply with the system.

Section 13. Section 10-3-1204, MCA, is amended to read:

“10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part, ~~and in so doing, the~~ The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, ~~which~~ *that* coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in [section 4].

~~(14)~~(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Section 14. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 12].

Section 15. Two-thirds vote required — contingent voidness. Because [section 12(3)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then [section 12(3)] is void.

Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective date. [This act] is effective on passage and approval.

Section 20. Applicability. (1) [This act], except [sections 7 through 12], applies on [the effective date of this act].

(2) [Sections 7 through 12] apply October 1, 2005.

Section 21. Transition. Because [section 4], creating the Montana intrastate mutual aid committee, is effective and applicable on passage and approval, the state emergency response commission established in 10-3-1204 will not have had the opportunity to appoint the members of the committee. Therefore, the state emergency response commission shall appoint the members of the Montana intrastate mutual aid committee before August 1, 2005.

Approved April 21, 2005

CHAPTER NO. 355

[SB 143]

AN ACT PROVIDING FOR CONTINGENT TRANSFERS AND AN APPROPRIATION FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-704, MCA, is amended to read:

“75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for

indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

Section 2. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, *except as provided in subsection (9)*, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection (10)~~, to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection ~~(8)~~ (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.~~

~~(8)~~(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

~~(9)~~(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(10)~~(9) For the biennium beginning July 1, ~~2003~~ 2005, and subject to the provisions of ~~section 4, Chapter 199, Laws of 2003~~ [section 3], the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.”

Section 3. Contingent transfer of orphan share funds — appropriation. (1) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the environmental quality protection fund established in 75-10-704 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the environmental quality fund exceed revenue available to the fund. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the environmental quality protection fund in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(2) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the hazardous waste/CERCLA special revenue account established in 75-10-621 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the hazardous waste/CERCLA account exceed revenue available to the account. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the hazardous waste/CERCLA account in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(3) The total of the amounts transferred and appropriated pursuant to subsections (1) and (2) may not exceed \$600,000.

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 356

[SB 145]

AN ACT REVISING LAWS RELATED TO THE REGULATION OF PETROLEUM TANKS; REVISING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING REIMBURSEMENT ELIGIBILITY CRITERIA AND PROCEDURES; REQUIRING THE BOARD TO ANALYZE AND REPORT ON THE VIABILITY OF THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 2-15-2108, 75-11-308, 75-11-309, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2108, MCA, is amended to read:

“2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of ~~seven~~ seven members appointed by the governor as follows:

(a) a representative of the financial or banking industry with experience in small business or property loans;

~~(b) an attorney licensed to practice law in Montana with experience in environmental law;~~

~~(c)~~(b) a representative of the petroleum services industry or a representative of the petroleum release remediation consultant industry;

~~(d)~~(c) a representative of independent petroleum marketers and chain retailers;

~~(e)~~(d) ~~a representative~~ a representative of the general public;

~~(f)~~(e) a representative of service station dealers; ~~and~~

~~(g)~~(f) a representative of the insurance industry; *and*

(g) a person with a background in environmental regulation.

(3) The board shall elect a presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 2. Section 75-11-308, MCA, is amended to read:

"75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989; ~~and~~

(b) the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iii) an underground storage tank, as defined in 75-11-503, that the property owner had no previous knowledge of if the tank was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release at the time that the release was discovered *board determines was unknown to both the property owner and the department prior to its discovery if the owner applies to the department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the permit expires; and*

~~(b)~~(c) the release was an accidental release;

~~(c) following the discovery of the release, the underground storage tank from which the release occurred was removed or had a valid permit pursuant to 75-11-509 and the petroleum storage tank remained in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases; and~~

~~(d) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective~~

~~action plan approved by the department, from the time of discovery until the release is resolved.~~

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

- (a) a tank located at a refinery or a terminal of a refiner;
- (b) a tank located at an oil and gas production facility;
- (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;
- (d) a tank belonging to the federal government;
- (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or
- (f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

~~(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection (1)(e) or fails to conduct corrective action as required by subsection (1)(d) and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance."~~

Section 3. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) *Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.*

~~(b)(c)~~ (c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

~~(c)(d)~~ (d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection ~~(1)(e)~~ (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

~~(d)(e)~~ The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board.

~~(e)(f)~~ The owner or operator shall implement the *corrective action plan or plans approved plan by the department until the release is resolved*. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

~~(f)(g)~~ (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

~~(g)(h)~~ The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

~~(h)(i)~~ In addition to the documentation in subsections ~~(1)(f)~~ (1)(g) and ~~(1)(g)~~ (1)(h), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of

claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

~~(2)~~(3) The board shall review each claim received under subsections ~~(1)(g)~~ and ~~(1)(h)~~ (1)(g) and ~~(1)(h)~~ (1)(h), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. *Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.*

~~(3)~~(4) If an owner or operator disagrees with a board determination under subsection ~~(2)~~ (3), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

~~(4)~~(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

~~(5)~~(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection ~~(5)(b)~~ (6)(b) does not affect the order in which money in the fund is obligated under subsection ~~(4)~~ (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 4. Section 75-11-312, MCA, is amended to read:

“75-11-312. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being ~~utilized~~ *used* in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board’s choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309~~(2)(a)(3)(a)~~, the board may deny the costs, subject to 75-11-309~~(3)(4)~~.”

Section 5. Section 75-11-318, MCA, is amended to read:

“75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309~~(2)(3)~~, shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board shall use the fund to pay for:

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:

(i) the review or preparation of corrective action plans;

(ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) the actual and necessary administrative support provided to the board.

(b) department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;

(c) third-party review of corrective action plans or claims pursuant to 75-11-312;

(d) board staff expenses; and

(e) expenses of implementing the board’s duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and

(f) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225.

(7) *The board shall conduct an analysis of the short-term and long-term viability of the fund and report its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative session. This analysis must include but is not limited to:*

(a) trends in fund revenue and expenditure activity;

(b) exposure to long-term liabilities;

(c) impacts of changes in state and federal regulations relating to underground and aboveground storage tanks;

(d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions of the insurance; and

(e) the continuing need for collection of all or part of the petroleum tank release cleanup fee."

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 357

[SB 160]

AN ACT ELIMINATING THE STATUTORY AUTHORITY OF THE LEGISLATURE TO ASSIGN HOLDOVER SENATORS TO DISTRICTS FOR THE REMAINDER OF THOSE SENATORS' TERMS IN IMPLEMENTING A REDISTRICTING PLAN; AND REPEALING SECTION 5-1-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 5-1-116, MCA, is repealed.

Approved April 21, 2005

CHAPTER NO. 358

[SB 174]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE AN EXAMINER TO ADMINISTER MOTOR VEHICLE DRIVER'S LICENSE

EXAMINATIONS THAT ARE PREVIOUSLY SCHEDULED; AND
AMENDING SECTION 61-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-101, MCA, is amended to read:

“61-5-101. Driver licensing responsibilities of department. (1) The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver’s license services as required by this part.

(2) The department shall provide an examiner to administer a commercial driver’s license *or motor vehicle driver’s license* examination in any county of the state if the examination is previously scheduled through the department.”

Approved April 21, 2005

CHAPTER NO. 359

[SB 182]

AN ACT PROVIDING THAT AN ABSENTEE BALLOT CAST AND
RETURNED BY AN ELECTOR WHO DIES BEFORE ELECTION DAY MUST
BE COUNTED; AND AMENDING SECTIONS 13-13-204 AND 13-13-243,
MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-204, MCA, is amended to read:

“13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector’s death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may vote in person in any manner at the elector’s polling place.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector’s ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and *the ballot has been mailed or otherwise returned to the election administrator but the elector* dies between the time of balloting and election day, the deceased elector’s ballot ~~does not count~~ *must be counted.*”

Section 2. Section 13-13-243, MCA, is amended to read:

“13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes ~~shall~~ *must* be enclosed in an envelope and sealed, and the judges shall write on the envelope “rejected ballot(s) of absentee elector” (writing in the elector’s name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked “voted in person” and initialed by a majority of the election judges.

~~(2) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.~~

~~(4)~~(3) All rejected ballots ~~shall~~ *must* be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order."

Approved April 21, 2005

CHAPTER NO. 360

[SB 207]

AN ACT REQUIRING AS A CONDITION OF SENTENCE THAT SEXUAL OFFENDERS DESIGNATED AS LEVEL 3 OFFENDERS PARTICIPATE IN A PROGRAM FOR CONTINUOUS, SATELLITE-BASED MONITORING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ESTABLISH A PROGRAM FOR THE CONTINUOUS SATELLITE-BASED MONITORING OF LEVEL 3 SEXUAL OFFENDERS; REQUIRING PROGRESS REPORTS; AMENDING SECTION 46-23-1031, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the United States Department of Justice has published confirmed statistics that over 60% of serious and violent offenders in state prisons have a history of prior convictions and that the number of prisoners convicted for violent sexual assault has increased by an annual rate of 15% each year since 1980; and

WHEREAS, criminals who commit sexual and violent crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community; and

WHEREAS, intensive supervision of sexual or violent offenders is a crucial element to both the rehabilitation of the released convicts and the safety of the surrounding community; and

WHEREAS, mature technological solutions now exist to provide improved supervision and behavioral control of sexual or violent offenders following their release; and

WHEREAS, these solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographical location of supervised sexual or violent offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

WHEREAS, continuous 24-hour-a-day, 7-day-a-week electronic monitoring of those convicted of sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation, who failed to register as sexual or violent offenders as required by law, or who have been released from incarceration while they remain under the active supervision of the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sexual offenders — electronic monitoring as additional condition of sentence. Upon sentencing a person for conviction of a sexual offense under Title 45, chapter 5, part 5, who is designated as a level 3 offender under 46-23-509, the sentencing judge shall, as a condition of probation, parole, conditional release, or deferment or suspension of sentence, require the offender to participate in the program for the continuous satellite-based monitoring of sexual offenders established under [section 2].

Section 2. Sexual offenders — electronic monitoring program — contract — rules. (1) The department shall establish a program for the continuous, satellite-based monitoring of sexual offenders designated as level 3 offenders under 46-23-509. The program may include:

(a) time-correlated and continuous tracking of the geographic location of a monitored person using a global positioning system based on satellite and other location-tracking technology;

(b) reporting of a monitored person's violation of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once-a-day, passive reporting to near-real-time, active reporting.

(c) an automated system that allows local and state law enforcement officials to compare the geographic positions of a monitored person with reported criminal incidents to determine whether the monitored person was at or near the scene of a reported criminal incident and to include or exclude a monitored person from the investigation of a criminal incident.

(2) The department shall adopt rules for the establishment and operation of the program required under subsection (1), including rules establishing supervisory fees. The department may consult with state and local law enforcement officials in developing the rules.

(3) The department shall contract with a single vendor for the procurement of the equipment and services needed to monitor persons under the program and correlate the movements of monitored persons to reported criminal incidents. The contract may provide for equipment and services necessary to implement or facilitate any of the provisions of this section and for the collection and disposition of the fees provided for in 46-23-1031 and may allow for the reasonable cost of collection of the proceeds.

Section 3. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection ~~(1)(b)~~ (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or

(ii) *under continuous satellite-based monitoring shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under [section 2].*

(b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

~~(b)(c)~~ The court, department, or board may reduce or waive a fee required by subsection (1)(a) *or* (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) ~~Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district~~ District court clerks shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator."

Section 4. Interim report to legislature. During fiscal years 2006 and 2007, the department of corrections shall make regular progress reports to the law and justice interim committee regarding the establishment, operation, and administration of the program for the continuous satellite-based monitoring of sexual offenders.

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 2].

Section 6. Coordination instruction. If House Bill No. 288 is passed and approved and if it amends 46-23-1031, then [section 3 of this act], amending 46-23-1031, is void and 46-23-1031 must be amended as follows:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection ~~(1)(b)~~ (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision department a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or

(ii) under continuous satellite-based monitoring shall pay to the department a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under [section 2].

(b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

~~(b)(c)~~ The court, department, or board may reduce or waive a fee required by subsection (1)(a) *or* (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) ~~Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks~~ *The department* shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) ~~as specified by the supreme court administrator.~~

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 361

[SB 208]

AN ACT INCREASING FROM \$25 TO \$50 THE CHARGE IMPOSED UPON CONVICTION OF A MISDEMEANOR OR FELONY UNDER TITLE 45, 61-8-401, OR 61-8-406 AND USED TO FUND CRIME VICTIM AND WITNESS ADVOCATE PROGRAMS; AND AMENDING SECTION 46-18-236, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-236, MCA, is amended to read:

“46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$15 for each misdemeanor charge;
- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
- (c) an additional ~~\$25~~ \$50 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal

court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Approved April 21, 2005

CHAPTER NO. 362

[SB 304]

AN ACT ESTABLISHING THE RAWHIDE STAMPEDE RUSTLERS AND RENDEZVOUS TRADE CORRIDOR ALONG STATE HIGHWAY 16 BETWEEN GLENDIVE AND THE PORT OF RAYMOND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rawhide stampede rustlers and rendezvous trade corridor — planning. The commission shall designate a route, to be known as the rawhide stampede rustlers and rendezvous trade corridor, along the present route of state highway 16 from Glendive to the port of Raymond in order to

facilitate trade between Canada and Mexico, to encourage economic development, to enhance the safety of motorists along the route, as appropriate, and to support region connectivity. Planning for the state highway 16 improvements must be included, as appropriate, in any future fiscal plan developed by the department.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to the tribal government located on the Fort Peck reservation.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

Approved April 21, 2005

CHAPTER NO. 363

[SB 311]

AN ACT REGULATING THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE; PROVIDING THE PURPOSE, SCOPE, AND DEFINITIONS FOR THE ACT; ESTABLISHING CRITERIA FOR THE USE OF CREDIT INFORMATION IN INSURANCE UNDERWRITING; LISTING CONDITIONS FOR UNDERWRITING OR RATING EXCEPTIONS; PROVIDING FOR DISPUTE RESOLUTION AND ERROR CORRECTION; PROVIDING FOR NOTICE TO CONSUMERS OF THE USE OF CREDIT INFORMATION AND ADVERSE ACTION BASED ON THE USE OF CREDIT INFORMATION; REQUIRING INSURERS TO FILE THEIR CREDIT SCORING MODELS WITH THE COMMISSIONER OF INSURANCE; PROVIDING FOR THE INDEMNIFICATION OF INSURANCE PRODUCERS USING SCORING INFORMATION; PROHIBITING CONSUMER REPORTING AGENCIES FROM PROVIDING OR SELLING CERTAIN DATA PERTAINING TO A CONSUMER'S CREDIT; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 11] may be cited as the "Montana Use of Credit Information in Personal Insurance Act".

Section 2. Purpose. The purpose of [sections 1 through 11] is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information.

Section 3. Scope. [Sections 1 through 11] apply to personal insurance and not to commercial insurance. For purposes of [sections 1 through 11], "personal insurance" means private passenger automobile, home owners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, and recreational vehicle policies. These policies must be individually underwritten for personal, family, or household use. Other types of insurance may not be included as personal insurance for the purpose of [sections 1 through 11].

Section 4. Definitions. For the purposes of [sections 1 through 11], the following definitions apply:

(1) "Adverse action" means, in regard to the terms of coverage or amount of coverage of any insurance, existing or applied for, in connection with the underwriting of personal insurance, any of the following:

- (a) denial, nonrenewal, or cancellation of coverage;
- (b) an increase in any charge for coverage;
- (c) failure to give an otherwise available credit-related discount; or
- (d) a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage.

(2) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or of an applicant for a personal insurance policy.

(5) "Consumer reporting agency" means any entity that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit related may not be considered credit information regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

Section 5. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

- (a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

- (b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

- (c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

- (d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers.

(C) credit was not used for underwriting or rating the insured when the policy was initially written.

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information; or

(h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; or

(iv) theft of identity pursuant to 45-6-332.

Section 6. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of that determination from either the consumer reporting agency or the insured, the insurer shall reunderwrite and rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated

back to the shorter of either the last 12 months of coverage or the actual policy period.

Section 7. Initial notification. (1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer does not have to provide the disclosure statement required under this section to any insured on a renewal policy if the consumer has previously been provided a disclosure statement.

(2) Use of the following disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

Section 8. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms, such as "poor credit history", "poor credit rating", or "poor insurance score", does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

Section 9. Filing. (1) Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.

Section 10. Indemnification. An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer that obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This section may not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 11. Sale of policy term information by consumer reporting agency. (1) A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This information includes but is not limited to the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's

insurance may expire and the terms and conditions of the consumer's insurance coverage.

(2) The restrictions provided in subsection (1) do not apply to data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holding companies.

(3) This section may not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 12. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to ~~duly~~ licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

~~(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.~~

~~(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:~~

~~(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;~~

~~(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and~~

~~(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.~~

~~(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders."~~

Section 13. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections 1 through 11].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Applicability. [This act] applies to personal insurance policies written to be effective or renewed on or after October 1, 2005.

Approved April 21, 2005

CHAPTER NO. 364

[SB 381]

AN ACT DEFINING "CHILD" OR "CHILDREN" FOR PURPOSES OF THE CRIMINAL LAWS; REVISING THE OFFENSE OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT THE LURING OF CHILDREN TO ENGAGE IN ANY SEXUAL CONDUCT AND NOT JUST FOR PURPOSES OF CHILD PORNOGRAPHY IS A CRIME; AND AMENDING SECTIONS 45-2-101 AND 45-5-625, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words ~~will~~ *must* be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "*Child*" or "*children*" means any individual or individuals under 18 years of age, unless a different age is specified.

(6)(7) "Cohabit" means to live together under the representation of being married.

~~(7)~~(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8)(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9)(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

~~(10)~~(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

~~(11)~~(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

~~(12)~~(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

~~(13)~~(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

~~(14)~~(15) "Conduct" means an act or series of acts and the accompanying mental state.

~~(15)~~(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16)(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

~~(17)~~(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property,

whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

~~(18)~~(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

~~(19)~~(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

~~(20)~~(21) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

~~(21)~~(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

~~(22)~~(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

~~(23)~~(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

~~(24)~~(25) A "frisk" is a search by an external patting of a person's clothing.

~~(25)~~(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

~~(26)~~(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

~~(27)~~(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

~~(28)~~(29) "Human being" means a person who has been born and is alive.

~~(29)~~(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

~~(30)~~(31) "Inmate" means a person who is confined in a correctional institution.

~~(31)~~(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

~~(32)~~(33) An “involuntary act” means an act that is:

- (a) a reflex or convulsion;
- (b) a bodily movement during unconsciousness or sleep;
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

~~(33)~~(34) “Juror” means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term “juror” also includes a person who has been drawn or summoned to attend as a prospective juror.

~~(34)~~(35) “Knowingly”—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person’s own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person’s conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as “knowing” or “with knowledge”, have the same meaning.

~~(35)~~(36) “Medicaid” means the Montana medical assistance program provided for in Title 53, chapter 6.

~~(36)~~(37) “Medicaid agency” has the meaning in 53-6-155.

~~(37)~~(38) “Medicaid benefit” means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

~~(38)~~(39) (a) “Medicaid claim” means a communication, whether in oral, written, electronic, magnetic, or other form:

- (i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or
 - (ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.
- (b) The term includes related documents submitted as a part of or in support of the claim.

~~(39)~~(40) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person’s own conduct.

~~(40)~~(41) “Mentally incapacitated” means that a person is rendered temporarily incapable of appreciating or controlling the person’s own conduct as a result of the influence of an intoxicating substance.

~~(41)~~(42) “Misdemeanor” means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

~~(42)~~(43) “Negligently”—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation. “Gross deviation” means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as “negligent” and “with negligence”, have the same meaning.

~~(43)~~(44) “Nolo contendere” means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

~~(44)~~(45) “Obtain” means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

~~(45)~~(46) “Obtains or exerts control” includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(46)~~(47) “Occupied structure” means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(47)~~(48) “Offender” means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(48)~~(49) “Offense” means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(49)~~(50) (a) “Official detention” means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(50)~~(51) “Official proceeding” means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

~~(51)~~(52) “Other state” means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(52)~~(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(53)~~(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(54)~~(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

~~(55)~~(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(56)~~(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

~~(57)~~(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(58)~~(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(59)~~(60) "Premises" includes any type of structure or building and real property.

~~(60)~~(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and
- (k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer

programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

~~(61)~~(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

~~(62)~~(63) "Public place" means a place to which the public or a substantial group has access.

~~(63)~~(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. ~~The term does not include witnesses.~~ The term "public servant" includes one who has been elected or designated to become a public servant.

(b) *The term does not include witnesses.*

~~(64)~~(65) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

~~(65)~~(66) (a) "Serious bodily injury" means bodily injury that:

- (i) creates a substantial risk of death;
- (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or
- (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

~~(66)~~(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

- (a) cause bodily injury to or humiliate, harass, or degrade another; or
- (b) arouse or gratify the sexual response or desire of either party.

~~(67)~~(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

- (i) cause bodily injury or humiliate, harass, or degrade; or
- (ii) arouse or gratify the sexual response or desire of either party.
- (b) For purposes of subsection ~~(67)~~(a) (68)(a), any penetration, however slight, is sufficient.

~~(68)~~(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(69)~~(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

~~(70)~~(71) "Statute" means an act of the legislature of this state.

~~(71)~~(72) "Stolen property" means property over which control has been obtained by theft.

~~(72)~~(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(73)~~(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(74)~~(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

~~(75)~~(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(76)~~(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might

reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection ~~(76)(a)~~ (77)(a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(77)~~(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(78)~~(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(79)~~(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, *by any means of communication, including electronic communication as defined in 45-8-213*, persuades, entices, counsels, or procures a child *under 16 years of age or a person the offender believes to be a child under 16 years of age* to engage in sexual conduct, actual or simulated, ~~for use as designated in subsection (1)(a), (1)(b), or (1)(d);~~

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.”

Approved April 21, 2005

CHAPTER NO. 365

[SB 440]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE SPECIALTY HOSPITALS; PROVIDING A DEFINITION; PROVIDING REQUIREMENTS FOR LICENSURE; ENACTING A MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS UNTIL JUNE 1, 2007; AMENDING SECTION 50-5-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

“50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation” means a designation of approval.

(2) “Accreditation association for ambulatory health care” means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) “Activities of daily living” means tasks usually performed in the course of a normal day in a resident’s life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immuno-hematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in

that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services

include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. *Services Except as otherwise provided by law, services* provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; *and*

(ii) *specialty hospitals.*

(b) The term does not include critical access hospitals.

(29) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmarium—A" provides outpatient and inpatient care;

(b) an "infirmarium—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or

both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) *"Specialty hospital" means a specialty hospital as defined in [section 2].*

~~(55)~~(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and

approved by the governor and a statewide health coordinating council appointed by the director of the department.

(56)(57) “Swing bed” means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.”

Section 2. Department to license specialty hospitals — standards — definition — moratorium. (1) The department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) As used in this section, “specialty hospital” means a specialty hospital as defined in 42 U.S.C. 1395nn.

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, 2007.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

Section 4. Contingent effective date. [This act] is effective upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued. The director shall certify the date of the expiration as soon as the expiration is effective and shall send a copy of the certification to the code commissioner.

Section 5. Applicability. [This act] applies to specialty hospitals to be established after the moratorium on referrals to specialty hospitals referred to in [section 4] expires.

Section 6. Termination. [This act] terminates July 1, 2007.

Approved April 21, 2005

CHAPTER NO. 366

[SB 459]

AN ACT TRANSFERRING THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; ASSIGNING RESPONSIBILITY FOR THE ADOPTION OF MOTOR CARRIER SAFETY STANDARDS AND PRIMARY RESPONSIBILITY FOR MOTOR CARRIER INSPECTION TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THE MONTANA HIGHWAY PATROL TO COORDINATE WITH THE DEPARTMENT OF TRANSPORTATION FOR MOTOR CARRIER SAFETY AND ENFORCEMENT OF CERTAIN LAWS; AND AMENDING SECTIONS 15-70-233, 15-70-357, 19-8-101, 44-1-1005, 44-4-301, 44-4-302, 61-9-512, 61-10-141, 61-12-205, 61-12-206, 61-12-208, AND 76-13-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-233, MCA, is amended to read:

“15-70-233. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) “conveyance” means a tank car, vehicle, or vessel that is used to transport fuel;

(b) “department” means the department of transportation; and

(c) “peace officer” means an employee of the department of transportation *designated or* appointed as a peace officer under *[section 8]* or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director’s designee before seizing fuel.

(4) Upon seizing the fuel *that* the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department’s determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 2. Section 15-70-357, MCA, is amended to read:

"15-70-357. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation *designated or* appointed as a peace officer under *[section 8]* or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel *that* the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

- (a) the original owner of the fuel;
- (b) the owner of the transportation company that conveyed the fuel; and
- (c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

- (a) provide the opportunity for a hearing;
- (b) if requested, conduct the hearing within 5 days after receiving the claim;
- (c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and
- (d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

- (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or
- (ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

- (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and
- (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

- (a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or
- (b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

- (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or
- (b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 3. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation *designated or* appointed as a peace officer pursuant to *[section 8]* or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 4. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Motor carriers safety — enforcement — violations. (4) The department of justice shall adopt, by rule, standards for safety of operations of:

(a) ~~any for-hire motor carrier or any private motor carrier;~~

(b) ~~any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;~~

(c) ~~any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;~~

(d) ~~any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and is not used to transport passengers for compensation;~~

(e) ~~any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or~~

~~(f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.~~

~~(2) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.~~

~~(3)(1) The highway patrol has the responsibility for enforcement of standards adopted pursuant to this section to enforce the provisions of Title 61, chapters 5, 8, and 9, as they apply to motor carriers and shall assist the department of transportation in the enforcement of safety standards adopted pursuant to [section 8]. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to this section is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. This section does not prohibit the inspection of a motor vehicle, as provided for by this section, at a safe location on a public road.~~

~~(4) The department~~

~~(2) The highway patrol shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort of the provisions of Title 61 as they apply to motor carriers.~~

~~(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to this section. Each employee designated as a peace officer may:~~

~~(a) issue citations and make arrests;~~

~~(b) issue summonses;~~

~~(c) accept bail;~~

~~(d) serve warrants of arrest;~~

~~(e) make reasonable inspections of cargo carried by commercial motor vehicles;~~

~~(f) make reasonable safety inspections of commercial motor vehicles; and~~

~~(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.~~

~~(6) Violations of the standards adopted pursuant to this section are punishable as provided in 61-9-512, and the court, upon conviction or forfeiture of bail that is not vacated, shall forward a record of conviction or forfeiture to the department within 5 days in accordance with 61-11-101.~~

~~(7) As used in this section, the terms "for hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5."~~

Section 5. Section 44-4-301, MCA, is amended to read:

"44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of ~~motor carrier services division officers~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*, and establish minimum standards for law enforcement, detention officer, and juvenile detention or juvenile corrections officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall establish minimum standards for training corrections officers and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*.

(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, juvenile detention or juvenile corrections officer, and ~~commercial vehicle inspector appointed under its authority~~ *employee of the department of transportation designated or appointed as a peace officer under [section 8] or 61-12-201* whose term of employment commenced after September 30, 1999, to attend and successfully complete within 1 year of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, or juvenile detention or juvenile corrections officer's, ~~or commercial vehicle inspector's~~ employment or the employment of an employee of the department of

transportation designated or appointed as a peace officer under [section 8] or 61-12-201 for failure to:

- (a) meet the minimum standards established by the board; or
- (b) satisfactorily complete the appropriate basic course."

Section 6. Section 44-4-302, MCA, is amended to read:

"44-4-302. Definitions. As used in this part, the following definitions apply:

~~(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.~~

~~(2)~~(1) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

~~(3)~~(2) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

~~(4)~~(3) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

~~(5)~~(4) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

~~(6)~~(5) "Juvenile detention center" means a detention facility as defined in 41-5-103.

~~(7)~~(6) "Juvenile detention or juvenile corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court or the department of corrections and who performs tasks related to the operation of a juvenile detention center or a juvenile correctional facility.

~~(8)~~(7) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(9)~~(8) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time that a person is held in temporary detention may not exceed 96 hours."

Section 7. Section 61-9-512, MCA, is amended to read:

"61-9-512. Violation of rules — penalty. (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of a violation of any standard adopted pursuant to ~~44-1-1005~~ [section 8] shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to ~~44-1-1005~~ [section 8]. The penalties may be imposed against:

- (a) a director or officer of the corporation;
- (b) any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or
- (c) any broker of property or officer, agent, or employee ~~thereof~~ *thereof of the broker.*"

Section 8. Department of transportation to adopt motor carrier safety standards — enforcement of safety standards — department to designate peace officers — violation of standards — duty to obtain bills of lading for agricultural seeds — authority to inspect diesel-powered vehicles. (1) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5.

(2) The department of transportation shall adopt, by rule, standards for safety of operations of:

- (a) any for-hire motor carrier or any private motor carrier;
- (b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;
- (c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;
- (d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and that is not used to transport passengers for compensation;
- (e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or
- (f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

(3) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to this section. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement efforts.

(5) In order to enforce compliance with safety standards adopted pursuant to this section, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

- (a) issue citations and make arrests in connection with violations of safety standards adopted under this section;

- (b) issue summons;
 - (c) accept bail;
 - (d) serve warrants for arrest;
 - (e) make reasonable inspections of cargo carried by commercial motor vehicles;
 - (f) enforce the provisions of Title 49 of the United States Code and regulations that have been adopted under Title 49 and make reasonable safety inspections of commercial motor vehicles used by motor carriers; and
 - (g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.
- (6) In addition to other enforcement duties assigned under 61-10-141 and this section, an employee of the department of transportation who is appointed as a peace officer pursuant to 61-12-201 or this section has:
- (a) the same authority to enforce provisions of the motor carriers law as that granted to the public service commission under 69-12-203;
 - (b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds, as defined in 80-5-120, that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date that the bill of lading was obtained; and
 - (c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.
- (7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction or forfeiture of bail that is not vacated, shall forward a record of conviction or forfeiture to the department within 5 days in accordance with 61-11-101.
- (8) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement of the provisions of Title 15, chapter 70, part 3, pursuant to the authority provided in subsection (6)(c) and on any impacts that enforcement has had on the state special revenue fund.

Section 9. Section 61-10-141, MCA, is amended to read:

“61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — ~~enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds — authority to inspect diesel-powered vehicles.~~ (1) (a) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles as defined in 61-1-132, by means of either portable or stationary scales and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles.

(b) ~~That person~~ *If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation may then require the driver to unload at a designated facility that portion of the load necessary to*

decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.

~~(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.~~

~~(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:~~

~~(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;~~

~~(b) issue summons;~~

~~(c) accept bail;~~

~~(d) serve warrants for arrest;~~

~~(e) make reasonable inspections of cargo carried by commercial motor vehicles;~~

~~(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and~~

~~(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.~~

~~(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation who is appointed pursuant to 61-12-201 has:~~

~~(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203;~~

~~(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120~~

~~that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained; and~~

~~(c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.~~

~~(7) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement, pursuant to the authority provided in subsection (6)(c), of the provisions of Title 15, chapter 70, part 3, and on any impacts that enforcement has had on the state special revenue fund."~~

Section 10. Section 61-12-205, MCA, is amended to read:

"61-12-205. Power to inspect vehicle registration, receipts, and other documents. Employees of the department *designated or* appointed *as peace officers* under *[section 8]* or 61-12-201 may when officially dressed make reasonable ~~inspection~~ *inspections* of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana."

Section 11. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. Employees *designated or* appointed *as peace officers* under *[section 8]* or 61-12-201 may make arrests for violations of the following statutory provisions:

- (1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;
- (2) chapter 10 of this title;
- (3) part 3, chapter 4, of this title;
- (4) 15-24-201 through 15-24-205;
- (5) Title 15, chapter 70, parts 2 and 3;
- (6) ~~44-1-1005~~ *[section 8]* and safety rules adopted under that section;
- (7) Title 69, chapter 12."

Section 12. Section 61-12-208, MCA, is amended to read:

"61-12-208. Duty upon making arrest — power to fix and accept bail. Employees *designated or* appointed *as peace officers* under *[section 8]* or 61-12-201, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person who is arrested may be detained for a reasonable time for the purpose of issuing the notice or of awaiting the arrival of another peace officer who has been called to the scene, or the person may be transported, as provided in 46-7-101. If the employee accepts bail, the employee shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond."

Section 13. Section 76-13-601, MCA, is amended to read:

“76-13-601. Unlawful transportation of trees and boughs. (1) A person may not transport on the ways of this state more than five coniferous trees without having possession of a bill of sale showing ownership of the trees. The bill of sale shall specify:

- (a) the date of its execution;
 - (b) the name and address of the vendor or donor of the trees;
 - (c) the name and address of the vendee or donee of the trees;
 - (d) the number of trees, by species, sold or transferred by the bill of sale; and
 - (e) the shipping yards or the property from which the trees were taken.
- (2) Subsection (1) does not apply to:
- (a) the transportation of trees with their roots intact;
 - (b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;
 - (c) the transportation of coniferous trees by the owner of the land from which they were taken or the owner's agent, provided that agent has possession of a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; or
 - (d) the transportation of coniferous trees by a common carrier.
- (3) A person may not transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.
- (4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation ~~as designated or~~ appointed *as a peace officer* under ~~section 8/ or~~ 61-12-201, or an agent of the department of natural resources and conservation.
- (5) A person who violates this section shall be punished by a fine not to exceed \$500, imprisonment not to exceed 6 months, or both.
- (6) For the purposes of this section, “ways of this state” means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.”

Section 14. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 61, chapter 10, part 1, and the provisions of Title 61, chapter 10, part 1, apply to [section 8].

Section 15. Contingent voidness. If [section 8] of House Bill No. 35, exempting the Montana highway patrol from vacancy savings, is not passed and approved, [this act] is void.

Approved April 21, 2005

CHAPTER NO. 367

[SB 500]

AN ACT GENERALLY REVISING ELECTION LAWS TO FACILITATE VOTING BY DISABLED ELECTORS; PROVIDING THAT A DISABLED ELECTOR MAY USE A FINGERPRINT OR IDENTIFYING MARK INSTEAD OF A SIGNATURE; PROVIDING THAT A DISABLED ELECTOR MAY DESIGNATE ANOTHER PERSON AS THE ELECTOR'S AGENT; PROVIDING THAT AN ELECTION ADMINISTRATOR OR ELECTION JUDGE MAY SIGN FOR A DISABLED ELECTOR; DIRECTING THE SECRETARY OF STATE TO ADOPT RULES; REQUIRING NEW POLLING PLACES TO CONFORM TO THE ACCESSIBILITY STANDARDS UNDER THE AMERICANS WITH DISABILITIES ACT; REQUIRING ELECTION JUDGES TO ASK A DISABLED ELECTOR ENTERING A POLLING PLACE IF ASSISTANCE IS DESIRED; AND AMENDING SECTIONS 13-3-205, 13-13-114, 13-13-119, AND 13-13-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fingerprint, mark, or agent for disabled electors — rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in 13-13-213.

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

Section 2. Section 13-3-205, MCA, is amended to read:

"13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) (a) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places. ~~The~~

(b) *For polling places approved pursuant to this subsection (1) prior to [the effective date of this act], the standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.*

(2) *Polling places approved on or after [the effective date of this act] must comply with the accessibility standards in the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq."*

Section 3. Section 13-13-114, MCA, is amended to read:

"13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote.

(d) An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

~~(3) If the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used.~~

~~(4)(3) If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to [section 1] is not provided, the elector may cast a provisional ballot as provided in 13-13-601."~~

Section 4. Section 13-13-119, MCA, is amended to read:

"13-13-119. Aid to disabled elector. (1) *When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.*

~~(1)(2) The~~ An election judge or an individual chosen by the disabled elector as specified in subsection ~~(4)~~ (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking ~~his~~ the elector's ballot.

~~(2)(3)~~ The election judges shall require ~~the~~ a declaration of disability by the elector ~~to. The declaration must be made under oath and may administer the oath, which must be administered by an election judge.~~

~~(3)(4)~~ The elector may be assisted by two judges who represent different parties. The judges ~~must~~ shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

~~(4)(5)~~ Instead of assistance as provided in subsection ~~(3)~~ (4), the elector may request the assistance of any individual ~~whom he the elector~~ designates to the judges to aid ~~him the elector~~ in the marking of ~~his the elector's~~ ballot, ~~and the. An individual chosen designated to assist the elector shall sign his the individual's~~ name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of ~~his the elector's~~ employer, or an officer or agent of the elector's union.

~~(5)(6)~~ No elector other than the ~~one elector~~ who requires assistance may divulge to anyone within the polling place the name of any candidate for whom ~~he the elector~~ intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of ~~his the elector's~~ ballot."

Section 5. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (3), the elector shall mail the application directly to the election administrator or deliver the application in person to the election administrator. With the exception of an immediate family member, as defined in 15-30-602, ~~or~~ a guardian, ~~or an agent designated pursuant to [section 1],~~ a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(3) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 6. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official paper absentee ballots are printed, the election administrator shall immediately send by mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state *or pursuant to [section 1]*;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 1, and the provisions of Title 13, chapter 1, part 1, apply to [section 1].

Approved April 21, 2005

CHAPTER NO. 368

[HB 71]

AN ACT PROVIDING THAT AN INDIVIDUAL WHO IS SEEKING LICENSURE AS A MORTGAGE BROKER AND WHO IS THE SOLE OWNER OF AN ENTITY SEEKING LICENSURE AS A MORTGAGE BROKER SHALL PAY A SINGLE LICENSE APPLICATION FEE AND A SINGLE LICENSE RENEWAL FEE; CLARIFYING THAT A DESIGNATED MANAGER MUST BE AN INDIVIDUAL LICENSED AS A MORTGAGE BROKER; AMENDING SECTIONS 32-9-117 AND 32-9-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-117, MCA, is amended to read:

“32-9-117. Fees — license renewal — disposition of fees. (1) (a) *Except as provided in subsection (1)(b), an* ~~An~~ individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. ~~A~~ A loan originator shall pay an initial nonrefundable license application fee of \$400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) *An individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.*

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, pay to the department a renewal fee in an amount set by the department by rule. *The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b) that are licensed as mortgage brokers. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager.* The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.”

Section 2. Section 32-9-122, MCA, is amended to read:

“32-9-122. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department ~~a~~ *an individual* licensed *as a* mortgage broker within its organization as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another *individual* licensed *as a* mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 369

[HB 587]

AN ACT PROVIDING THAT BENEFITS UNDER THE HIGHWAY PATROL OFFICERS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' RETIREMENT SYSTEMS THAT ARE PAYABLE TO A DEPENDENT CHILD

MUST BE PAID TO A TRUST IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-803, MCA, is amended to read:

“19-2-803. Payment to custodian of minor beneficiary. (1) ~~If~~ *Except as provided in subsection (2), if* any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

- (a) a surviving parent, if any;
- (b) a parent awarded custody of the minor in a divorce proceeding;
- (c) a custodian designated under Title 72, chapter 26;
- (d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
- (e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child, then the benefit must be paid to the trustee of that trust.

~~(2)(3)~~ The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person *receiving benefit payments pursuant to this section* shall account to the minor for the money when the minor reaches the age of majority.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 370

[SB 384]

AN ACT CLARIFYING THE AUTHORITY OF THE SECRETARY OF STATE TO ADOPT RULES FOR THE EFFECTIVE ADMINISTRATION OF THE SECRETARY OF STATE'S DUTIES RELATING TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-306 AND 2-15-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-306, MCA, is amended to read:

“2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) ~~The Pursuant to 2-15-401, the~~ secretary of state may prescribe ~~a~~ rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) ~~In the event that~~ If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 2. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state — authority. (1) In addition to the duties prescribed by the constitution, ~~it is the duty of the secretary of state to~~ shall:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to ~~do the same~~ *take and file receipts for all books distributed by the county clerk*;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of a member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

(2) The secretary of state may:

(a) develop and implement a statewide electronic filing system as described in 2-15-404;

(b) *adopt rules for the effective administration of the secretary of state's duties relating to the Montana Administrative Procedure Act established in Title 2, chapter 4.*

Approved April 25, 2005

CHAPTER NO. 371

[SB 525]

AN ACT ESTABLISHING A QUALITY SCHOOLS INTERIM COMMITTEE TO ASSESS THE EDUCATIONAL NEEDS OF MONTANA'S CHILDREN, DETERMINE THE COSTS OF A BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, DETERMINE THE

STATE'S SHARE OF THE COSTS, AND CONSTRUCT A FUNDING FORMULA THAT EQUITABLY DISTRIBUTES THE STATE'S SHARE OF THE COSTS OF THE BASIC SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Quality schools interim committee — duties. (1) There is a quality schools interim committee. The committee shall continue the work of the joint select committee on education funding established during the 59th legislative session. By December 1, 2005, the committee shall:

(a) assess the educational needs of the children served by the basic system of free quality public elementary and secondary schools in Montana, as defined by the legislature;

(b) determine the total costs of providing the basic system of free quality public elementary and secondary schools;

(c) determine the state's share of the total costs of a basic system of free quality public elementary and secondary schools;

(d) construct a funding formula that:

(i) is based on:

(A) the definition of a basic system of free quality public elementary and secondary schools adopted by the legislature;

(B) the assessment of educational needs conducted by the committee; and

(C) the work of the joint select committee on education funding as outlined in the select committee's final report;

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified by the legislature;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws;

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(vii) consolidates the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency; and

(e) prepare the appropriate legislation.

(2) The members of the committee are:

(a) four members of the house of representatives, two from each party, appointed by the speaker of the house in consultation with the house democratic leader and the house republican leader;

(b) four members of the senate, two from each party, appointed by the president of the senate; and

(c) as ex-officio, nonvoting members:

(i) the presiding officer of the board of public education or the presiding officer's designee;

(ii) the superintendent of public instruction or the superintendent's designee; and

(iii) the governor or the governor's designee.

(3) The committee shall select its presiding officer from among the voting members at the first meeting of the committee.

(4) The committee shall assess the educational needs of children and determine the costs of providing the basic system of free quality public elementary and secondary schools, as defined by the legislature, through one or more of the following:

(a) studies authorized or conducted by the committee;

(b) existing studies completed by reputable and reliable experts.

(5) In implementing the educational needs and cost analyses and in drafting a new funding formula, the committee:

(a) shall seek input from representatives from the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;

(b) may request assistance from other legislative and executive branch agencies; and

(c) shall examine the state's existing and projected financial resources as well as the needs and concerns of Montana taxpayers.

(6) The committee is attached for administrative purposes to the legislative services division.

(7) On or before October 1, 2005, the committee shall issue a report on the committee's preliminary findings and recommendations.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 372

[SB 2]

AN ACT RECOGNIZING THE AUTHORITY OF STATE AGENCIES AND UNITS OF LOCAL GOVERNMENT TO DISPLAY THE NATIONAL MOTTO AND OTHER HISTORICAL DOCUMENTS IN OR ON PUBLIC BUILDINGS OR ON STATE LAND; PROHIBITING THE CENSORSHIP OF AMERICAN HISTORY OR HERITAGE BASED ON RELIGIOUS REFERENCES IN WRITINGS, DOCUMENTS, OR RECORDS; PROHIBITING THE SELECTION OF WRITINGS, DOCUMENTS, OR MATERIAL FOR DISPLAY IN ORDER TO ADVANCE A PARTICULAR RELIGIOUS, PARTISAN, OR SECTARIAN PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Display of historical writings or documents in or on public buildings or on state land — definitions. (1) Subject to the provisions of subsection (3), a state agency or unit of local government may

display the national motto, “in God we trust”, as adopted by congress in 1998 (36 U.S.C. 302), in or on public buildings or state-owned land occupied by a state agency or unit of local government. For purposes of this section, the use of the word “God” is not intended to further the establishment of any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs.

(2) In addition to the national motto, the legislature encourages the display of other historical documents in or on public buildings and state-owned land, including but not limited to:

- (a) the Declaration of Independence;
- (b) the United States constitution;
- (c) the pledge of allegiance;
- (d) the national anthem;
- (e) the Mayflower Compact;
- (f) the writings, speeches, documents, and proclamations of the founders and the presidents of the United States;
- (g) writings from United States supreme court decisions;
- (h) organic documents from the precolonial, colonial, revolutionary, federalist, and postfederalist eras;
- (i) acts of the United States congress, including the published text of the Congressional Record;
- (j) United States treaties; and
- (k) any other writings, documents, or proclamations that are permanently displayed in a historic context in the United States capitol.

(3) The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings, documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.

(4) As used in this section, the following definitions apply:

- (a) “Local government” has the meaning provided in 1-2-116.
- (b) “State agency” has the meaning provided in 1-2-116.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 373

[SB 18]

AN ACT PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 18TH JUDICIAL DISTRICT; PROVIDING FOR PROVISIONAL APPOINTMENT TO THE POSITION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-102, MCA, is amended to read:

“3-5-102. Number of judges. In each judicial district, there must be the following number of judges of the district court:

- (1) in the 2nd, 7th, 16th, ~~18th~~, 20th, and 21st districts, two judges each;
- (2) in the 1st, ~~and~~ 11th, *and 18th* districts, three judges each;
- (3) in the 4th and 8th districts, four judges;
- (4) in the 13th district, five judges;
- (5) in all other districts, one judge each.”

Section 2. Provisional appointment — election. The additional judge for the 18th judicial district must be appointed pursuant to the provisions of Title 3, chapter 1, part 10, to take office on or after January 2, 2006. There must be an election for the office at the general election to be held in November 2006 for a 6-year term to begin in January 2007.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 374

[SB 58]

AN ACT REVISING STATUTES GOVERNING PUBLIC BOND ISSUES FOR THE PURPOSE OF ELIMINATING OBSOLETE PROVISIONS AND PROVIDING ADDITIONAL FLEXIBILITY; REPEALING SPECIAL PROVISIONS GOVERNING LONG-RANGE BUILDING PROGRAM BONDS AND EMPLOYMENT SECURITY BUILDING BONDS; AMENDING SECTIONS 17-5-302, 17-5-304, 17-5-802, 17-5-803, 17-5-805, AND 18-2-101, MCA; REPEALING SECTIONS 17-5-401, 17-5-402, 17-5-403, 17-5-404, 17-5-407, 17-5-408, 17-5-409, 17-5-410, 17-5-411, 17-5-412, 17-5-413, 17-5-414, 17-5-415, 17-5-416, 17-5-417, 17-5-421, 17-5-423, 17-5-424, 17-5-425, 17-5-426, 17-5-430, 17-5-431, 17-5-432, 17-5-433, 17-5-601, 17-5-602, 17-5-603, 17-5-604, 17-5-605, 17-5-606, 17-5-607, 17-5-608, 17-5-609, 17-5-610, 17-5-611, 17-5-612, 17-5-613, 17-5-614, 17-5-615, 17-5-616, 17-5-617, 17-5-618, 17-5-619, AND 17-5-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-302, MCA, is amended to read:

“17-5-302. Character of bonds — ~~amortization or serial.~~ ~~(1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners.~~

~~(2)(1)~~ The board of examiners shall prescribe all ~~other~~ details for the form, notice, and time of sale of the bonds or debentures.

~~(3)(2)~~ ~~They shall~~ *The bonds or debentures must* be registered in the office of the state treasurer in a book to be provided for that purpose."

Section 2. Section 17-5-304, MCA, is amended to read:

"17-5-304. Cost and expense of refunding. The board of examiners may ~~require the purchaser to bear~~ pay the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may to be paid out of the sinking and interest fund when there is money in such from the proceeds of the bonds or from the general fund. The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law."

Section 3. Section 17-5-802, MCA, is amended to read:

"17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in ~~such the manner as~~ that it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest ~~thereon on the bonds and notes~~ and premiums payable upon the redemption ~~thereof of the bonds and notes~~. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for ~~such that~~ fiscal year, and sufficient ~~revenues~~ revenue must be appropriated for the payment ~~thereof of principal, interest, and redemption premiums~~ from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for the payment ~~thereof of principal, interest, and redemption premiums~~. ~~No bonds~~ Bonds may not be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

~~(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4."~~

Section 4. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) ~~In~~ Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in ~~such the~~ denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at ~~such a~~ rate or rates, maturing at ~~such~~ times not exceeding 30 years from date of issue, subject to redemption at ~~such~~ earlier times and prices and on ~~such~~ notice, and payable at the office of ~~such the~~ fiscal agency of the state as the board shall determine ~~determines~~, subject to the limitations contained in this part and in the bond act.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. ~~Bonds and any interest coupons appurtenant thereto must be~~

signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all ~~such~~ bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, *in its discretion*, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available ~~therefor~~ *for these purposes* in the general fund or from the proceeds of the bonds, ~~in the discretion of the board~~.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.”

Section 5. Section 17-5-805, MCA, is amended to read:

“17-5-805. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as “bond anticipation notes”. The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than ~~1 year~~ *3 years* after the date of issue may be issued from time to time as the proceeds ~~thereof~~ are needed. ~~Such~~ *The* notes must be authorized by the board and must have ~~such~~ terms and details ~~as~~ *that* may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of ~~such~~ *the* notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts,

the maturities, the rate or rates of interest, and ~~such~~ other terms and details of the notes ~~as that~~ may be considered appropriate by the board, or the state treasurer in the event of ~~such a~~ delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless ~~and until~~ the board revokes ~~such the~~ authority to refund; and

(d) such other terms and conditions ~~as that~~ the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on ~~such~~ lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions ~~as that~~ the board may authorize in the resolution approving them."

Section 6. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation; *or*

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; *or*

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in ~~17-5-401 and~~ 17-5-801."

Section 7. Repealer. Sections 17-5-401, 17-5-402, 17-5-403, 17-5-404, 17-5-407, 17-5-408, 17-5-409, 17-5-410, 17-5-411, 17-5-412, 17-5-413, 17-5-414, 17-5-415, 17-5-416, 17-5-417, 17-5-421, 17-5-423, 17-5-424, 17-5-425, 17-5-426, 17-5-430, 17-5-431, 17-5-432, 17-5-433, 17-5-601, 17-5-602, 17-5-603, 17-5-604, 17-5-605, 17-5-606, 17-5-607, 17-5-608, 17-5-609, 17-5-610, 17-5-611, 17-5-612, 17-5-613, 17-5-614, 17-5-615, 17-5-616, 17-5-617, 17-5-618, 17-5-619, and 17-5-620, MCA, are repealed.

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 375

[SB 70]

AN ACT REVISING THE NOTICE REQUIREMENTS IN AN ACTION TO QUIET TITLE TO A TAX DEED; REQUIRING THAT NOTICE BE GIVEN TO ALL TRUE OWNERS WHOSE NAMES AND ADDRESSES ARE REASONABLY ASCERTAINABLE; AND AMENDING SECTION 15-18-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-411, MCA, is amended to read:

“15-18-411. Action to quiet title to tax deed — notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

- (i) own the property;
- (ii) have any interest in or lien upon the property;
- (iii) have a right to redeem the property; or
- (iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

- (i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements ~~thereon~~ *on the property* while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why ~~such~~ *the* payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether ~~he~~ *the owner* is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and ~~who is, at that time, known to be in the state of Montana whose name and address are reasonably ascertainable.~~

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer.”

Approved April 25, 2005

CHAPTER NO. 376

[SB 74]

AN ACT PROVIDING THAT CERTAIN LAND THAT IS NOT ELIGIBLE FOR VALUATION, ASSESSMENT, AND TAXATION AS AGRICULTURAL LAND IS CONSIDERED TO BE NONQUALIFIED AGRICULTURAL LAND; PROVIDING THAT LAND WITH COVENANTS OR OTHER RESTRICTIONS THAT PROHIBIT AGRICULTURAL USE MAY NOT BE CLASSIFIED OR VALUED AS NONQUALIFIED AGRICULTURAL LAND; AMENDING SECTIONS 15-6-133, 15-7-202, AND 15-10-420, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-133, MCA, is amended to read:

“15-6-133. Class three property — description — taxable percentage. (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon

which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), *which are considered to be nonqualified agricultural land. The Nonqualified agricultural land may not be devoted to a commercial or industrial purpose. Nonqualified agricultural land is valued at the productive capacity value of grazing land, at the average grade of grazing land.*

(2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The *taxable value* of land described in subsection (1)(c) is ~~valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is computed by multiplying the value of the land by seven times the taxable percentage rate for agricultural land.~~

Section 2. Section 15-7-202, MCA, is amended to read:

“15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1):

(i) “marketing” means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than *nonqualified agricultural* land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural *land or nonqualified agricultural land* if it is ~~subdivided land with~~ *has stated covenants or other restrictions that effectively prohibiting prohibit* its use for agricultural purposes. ~~For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.~~

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is *valued as provided in 15-6-133(1)(c) and is* taxed as provided in 15-6-133(1)(e)(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use."

Section 3. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;
- (c) transfer of property into a taxing unit;
- (d) subdivision of real property; and
- (e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as ~~nonagricultural~~ *nonqualified agricultural* land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
 - (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.
- (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360,

20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Coordination instruction. If House Bill No. 72 [LC 370] is passed and approved, then [section 1 of this act] and [section 1] of House Bill No. 72 [LC 370], amending 15-6-133, are void and 15-6-133 must be amended as follows:

"15-6-133. Class three property — description — taxable percentage. (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), *which are considered to be nonqualified agricultural land.* ~~The Nonqualified agricultural land~~ may not be devoted to a commercial or industrial purpose. *For the tax year beginning January 1, 2006, through the tax year ending December 31, 2008, nonqualified agricultural land*

is valued at the productive capacity value of grazing land, at the average grade of grazing land. For tax years beginning after December 31, 2008, nonqualified agricultural land is valued at the statewide average productive capacity value of grazing land.

(2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The *taxable value* of land described in subsection (1)(c) is ~~valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is computed by multiplying the value of the land by seven times the taxable percentage rate for agricultural land.~~

Section 5. Applicability. [This act] applies to property tax years beginning after December 31, 2005.

Approved April 25, 2005

CHAPTER NO. 377

[SB 82]

AN ACT REVISING THE DEFINITION OF "INTERMEDIATE CARE FACILITY" FOR PURPOSES OF THE UTILIZATION FEE ON RESIDENT BED DAYS; INCREASING THE UTILIZATION FEE FROM 5 PERCENT TO 6 PERCENT; AMENDING SECTIONS 15-67-101 AND 15-67-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-67-101, MCA, is amended to read:

"15-67-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the developmentally disabled licensed pursuant to 50-5-238 *or an intermediate care facility for the mentally retarded that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation.*

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) "Report" means the report of resident bed days required in 15-67-201.

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which

a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section 242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in 15-67-102. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

Section 2. Section 15-67-102, MCA, is amended to read:

"15-67-102. (Temporary) Utilization fee for resident bed days. (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is ~~5%~~ 6% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of 15-1-501, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to 53-6-1101 to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Approved April 25, 2005

CHAPTER NO. 378

[SB 91]

AN ACT ALLOCATING TWO SPECIAL WILD BUFFALO LICENSES ANNUALLY TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES FREE OF CHARGE; PROVIDING THAT WILD BUFFALO TAKEN PURSUANT TO THE SPECIAL LICENSES BE HUNTED AND USED IN THE MANNER TRADITIONAL TO EACH TRIBE; DESIGNATING THE TERMS AND CONDITIONS OF THE SPECIAL TRIBAL LICENSES; PROVIDING THAT ANY ADDITIONAL WILD BUFFALO LICENSES BE MADE AVAILABLE FOR PUBLIC HUNTING TO BE USED AND SOLD COINCIDENT WITH THE ISSUANCE AND USE OF SPECIAL WILD BUFFALO LICENSES ANNUALLY OFFERED TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, for millennia, wild buffalo roamed the vast, open spaces of Montana, followed in their migration by the ancient peoples of this state who relied on the buffalo for food, shelter, and clothing—indeed, for life itself; and

WHEREAS, through the ages, Montana tribes recognized this gift of life given by the Creator to the people through the buffalo and thus hunted the buffalo with utmost respect and appreciation, developing traditional ceremonies and practices that honored that gift; and

WHEREAS, beginning in the late 1880s, poaching and hunting reduced the population of the native wild buffalo herd in Yellowstone National Park to only 25 by 1901, so to avoid extinction, the park herd was supplemented by 21 buffalo from tribal captive herds in 1902, thereby keeping the gift alive for future generations of Americans; and

WHEREAS, as Yellowstone Park buffalo thrived in their protected environment, they achieved numbers that now provide for limited hunting in Montana when they migrate into this state and are authorized for hunting by the state veterinarian and the Department of Livestock; and

WHEREAS, buffalo meat is used as part of the treatment of tribal members who suffer from diabetes; and

WHEREAS, it is a fitting gesture by the State of Montana and the Legislature to honor and return the gift of the buffalo to Montana tribes for hunting and use in the traditional ceremonial ways.

Be it enacted by the Legislature of the State of Montana:

Section 1. Allocation of wild buffalo licenses to tribes for traditional purposes. (1) If the commission authorizes the issuance of 40 or more special wild buffalo licenses in any license year, the department shall issue special licenses to individuals of each tribe designated in subsection (4) to hunt wild buffalo during the regular season for wild buffalo and as prescribed in department rules and regulations. The department shall issue two special wild buffalo licenses to individuals designated by the respective tribal diabetic programs of each of the Montana tribes designated in subsection (4), coincident with the sale of any special wild buffalo licenses for public hunting pursuant to 87-2-730 and in accordance with the terms and conditions of this section.

(2) Wild buffalo taken pursuant to the special licenses issued under subsection (1) must be harvested by tribal members in accordance with the traditional ceremonies of each tribe. All parts of wild buffalo taken pursuant to this section may be possessed and used by each designated tribe in the manner that the tribe sees fit.

(3) Special wild buffalo licenses granted for tribal use pursuant to this section must be issued free of charge. The tribes must be informed of and abide by any rules adopted pursuant to 87-2-730(3)(c) through (3)(h), except that fair chase hunting by tribal members may include hunting conducted on horseback.

(4) The following Montana tribes may designate individuals from their tribal diabetic programs to receive department-issued special licenses, and the individuals are entitled to hunt during the season set aside by the commission for hunting wild buffalo:

- (a) Assiniboine and Sioux tribes;
- (b) Blackfeet tribe;
- (c) Chippewa Cree tribe;
- (d) Confederated Salish and Kootenai tribes;
- (e) Crow tribe;
- (f) Gros Ventre and Assiniboine tribes;

(g) Northern Cheyenne tribe; and

(h) Little Shell band of Chippewa.

(5) Special wild buffalo licenses granted under this section must be offered to the designated tribes as the first wild buffalo licenses available for hunting each year and may be granted to tribal designees in any order. When each of the two individuals designated by each tribe has been offered a license in any license year, any additional available licenses may be issued in the manner provided by the rules adopted by the commission pursuant to 87-2-730.

(6) Use of the special wild buffalo licenses granted under this section to individuals designated by the Montana tribes must coincide with the use of any other special wild buffalo license purchased for public hunting pursuant to 87-2-730.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates July 1, 2015.

Approved April 25, 2005

CHAPTER NO. 379

[SB 92]

AN ACT CLARIFYING THE METHOD OF APPRAISING RESIDENTIAL AND COMMERCIAL CONDOMINIUM PROPERTY FOR PROPERTY TAX PURPOSES; AMENDING SECTIONS 15-8-111, 15-8-511, AND 15-8-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

“15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the ~~capitalization of net income~~ *capitalization-of-net-income* method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost

exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; ~~and~~

(c) *for condominium property, the department shall establish the value as provided in subsection (4); and*

(d) as otherwise authorized in Titles 15 and 61.

(4) (a) *Subject to subsection (4)(c), if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.*

(b) *Subject to subsection (4)(c), if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.*

(c) *If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.*

(5) For purposes of taxation, assessed value is the same as appraised value.

~~(5)(6)~~ (6) The taxable value for all property is the percentage of market or assessed value established for each class of property.

~~(6)~~(7) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z) and (1)(aa).

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

~~(7)~~(8) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town."

Section 2. Section 15-8-511, MCA, is amended to read:

"15-8-511. Undivided interest in common elements of condominium project — definition. (1) Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

(2) ~~Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:~~

~~(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;~~

~~(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;~~

~~(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;~~

~~(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;~~

~~(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;~~

~~(f) the premises for the lodging of janitors or caretakers of the property; and~~

~~(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use As used in this chapter, "common elements" has the meaning provided in 70-23-102."~~

Section 3. Section 15-8-512, MCA, is amended to read:

"15-8-512. Common elements serving residential or commercial development. (1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. ~~Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots~~ *The value of common elements must be allocated to each lot owner pursuant to 15-8-111.*

(2) The assessment provisions of subsection (1) are not negated by the existence or formation of a contract between the developer and lot purchasers or an agreement among lot purchasers that would attempt to obligate the developer or an association of lot owners to pay taxes on the common elements."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

Approved April 25, 2005

CHAPTER NO. 380

[SB 93]

AN ACT REQUIRING THAT MONTHLY AND FISCAL YEAREND REPORTS CONCERNING THE COST OF MEDICAID SERVICES AND THE DEPARTMENTAL BUDGET BE PROVIDED TO THE LEGISLATIVE FINANCE COMMITTEE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; DELETING EXISTING REQUIREMENTS CONCERNING MEDICAID REPORTS; AMENDING SECTION 53-6-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-110, MCA, is amended to read:

"53-6-110. Report and recommendations on medicaid funding. (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health care facilities plan.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) ~~Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting. Beginning November 15 of each year through June 15 of the following year, the department of public health and human services shall provide to the legislative finance committee monthly reports containing estimates of the cost for medicaid services and a budget status report for all department programs. The department shall also provide a fiscal yearend summary of medicaid costs and the department budget status report prior to the first legislative finance committee meeting following the end of the fiscal year. The reports must be presented in a format mutually agreed to by the legislative finance committee and the department.~~

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 381

[SB 118]

AN ACT ESTABLISHING THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT; PROVIDING DEFINITIONS; PROHIBITING EMPLOYMENT DISCRIMINATION BASED ON MEMBERSHIP IN THE STATE'S ORGANIZED MILITIA; CLARIFYING AND UPDATING PROVISIONS AUTHORIZING LEAVES OF ABSENCE FOR ORGANIZED MILITIA MEMBERS AND THE RIGHT OF MEMBERS TO RETURN TO EMPLOYMENT WITHOUT LOSS OF SPECIFIED BENEFITS; CLARIFYING AND UPDATING MILITARY LEAVE PROVISIONS FOR ELECTED OFFICIALS; PROVIDING FOR ENFORCEMENT BY SPECIFYING COMPLAINT PROCEDURES, INFORMAL RESOLUTION, AND COURT REMEDIES; SPECIFYING THE DUTIES AND POWERS OF THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE STATE ATTORNEY GENERAL WITH RESPECT TO COMPLAINTS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO PAID MILITARY LEAVE FOR PUBLIC EMPLOYEES; UPDATING MILITARY LEAVE PROVISIONS RELATED TO DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 2-16-112, 2-16-501, 7-4-2208, 10-1-604, 10-1-615, 19-2-707, 39-51-1214, AND 39-51-2302, MCA; REPEALING SECTIONS 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226,

10-2-227, AND 10-2-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 18] may be cited as the “Montana Military Service Employment Rights Act”.

Section 2. Purpose — legislative intent. The purpose of [sections 1 through 18] is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that [sections 1 through 18] will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.

Section 3. Definitions. Unless the context requires otherwise, as used in [sections 1 through 18], the following definitions apply:

(1) “Department” means the department of labor and industry established in 2-15-1701.

(2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) “Employer” means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.

(5) “Member” means a member of the state’s organized militia provided for in 10-1-103.

(6) “Military service” includes both federally funded military duty and state active duty.

(7) (a) “State active duty” means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution to include the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the active duty.

(b) The term does not include federally funded military duty.

Section 4. Rights under federal law. A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and other applicable federal law.

Section 5. Prohibition against employment discrimination. An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate

against, or threaten negative consequences against a person with regard to employment because of the person's membership, application for membership, or potential application for membership in the state organized militia or because the person may exercise or has exercised a right or may claim or has claimed a benefit under [sections 1 through 18].

Section 6. Entitlement to leave of absence. (1) A member ordered to state active duty is entitled to a leave of absence from the person's employment during the period of that state active duty.

(2) A leave of absence for state active duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction.

Section 7. Right to return to employment without loss of benefits — exceptions — definition. (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii);

(ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state active duty:

(i) the member's period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitable of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202.

Section 8. Leave of absence for elected officials — restoration to office. (1) If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service.

(2) An elected official's leave of absence pursuant to this section does not create a vacancy in office or require the official to forfeit the office.

(3) If an acting official is appointed pursuant to [section 9], the leave of absence must be without pay.

(4) An elected official ordered to military service is entitled to the employment rights and benefits that would be provided to any other employee under the official's employer if the employee were on a leave of absence subject to the provisions of [sections 1 through 18].

(5) Upon returning from a leave of absence for military service, if an acting official was appointed pursuant to [section 9], the returning elected official is entitled to be restored to office for the official's unexpired term immediately upon the official's request after being released from the military service.

Section 9. Appointment of acting officials. (1) When an elected official is ordered to military service, an acting official must be appointed as provided in this section if:

(a) the elected official is precluded pursuant to federal law from performing the official duties of the office; or

(b) the elected official requests the appointment of an acting official.

(2) If an acting official is appointed, the acting official shall take any oath of office required to assume the office, shall exercise all the rights, powers, and duties vested in the office, and must be provided with all the employment rights and benefits associated with the position until the elected official is restored to office pursuant to [section 8(5)] or the elected official's term expires, whichever occurs first.

(3) (a) The governor shall appoint the acting official for any office elected by the state at large and for the office of district judge, public service commissioner, or any other elected regional or district office of the state.

(b) An acting official for a legislative district must be appointed using the procedures in 5-2-402.

(c) The board of county commissioners shall appoint the acting official for any elected office of a county.

(d) The city or town council shall appoint the acting official for any elected office of a city or town.

(4) For any elected office not covered under subsection (3), the governing body shall determine the method by which an acting official may be appointed pursuant to this section.

(5) An appointment of an acting official pursuant to this section must be made for a period not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the office upon returning from the military service, as provided in [section 8(5)].

Section 10. Procedure for filing a complaint. (1) A person entitled to rights or benefits under [sections 1 through 18] and who claims that an employer has failed or is about to fail to comply with the provisions of [sections 1 through 18] may file a complaint with the department as provided in this section.

(2) A complaint under this section must be:

(a) filed within 15 days after the member discovered the actions or practice alleged to constitute an employer's failure or imminent failure to comply with the provisions of [sections 1 through 18]; and

(b) submitted in writing to the department in a manner prescribed by the department.

(3) The department shall, upon request, provide technical assistance to a person wishing to file a complaint pursuant to this section.

Section 11. Assistance, investigation, and enforcement of complaints. (1) The department shall provide assistance to any person with respect to the employment rights and benefits to which the person is entitled

pursuant to [sections 1 through 18]. The department may request the assistance of federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

(2) The department shall investigate each complaint submitted pursuant to [section 10]. The department shall initiate the investigation within 30 days of receiving the complaint. Within 60 days of receiving the complaint, the department shall make a finding about whether a violation of rights or benefits provided in [sections 1 through 18] has occurred or is about to occur and shall notify the complainant and the employer in writing of the finding.

(3) If the department's investigation finds that a violation of [sections 1 through 18] has occurred or is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer named in the complaint complies with the provisions of [sections 1 through 18].

(4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department shall notify the complainant of the complainant's right to request that the department refer the complaint to the state attorney general under the provisions of [section 13].

Section 12. Enforcement and investigative powers of the department. To carry out its enforcement and investigative duties under [sections 1 through 18], the department has the power to:

(1) enter and inspect the places, question the employees, and investigate the facts, conditions, or matters that the department considers appropriate to determine whether an employer has violated or is about to violate the provisions of [sections 1 through 18] or that will aid the department in the enforcement of the provisions of this part; and

(2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits relevant to the department's duties under [sections 1 through 18].

Section 13. Referral of complaint to state attorney general. (1) A complaint that could not be successfully resolved pursuant to [section 11] must be referred by the department to the state attorney general if the complainant requests the referral pursuant to [section 11(4)].

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

Section 14. Independent lawsuit not precluded — exhaustion of administrative remedies. Nothing in [sections 1 through 18] may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of [sections 1 through 18]. However, if a person files a complaint with the department as provided in [section 10], the person must have exhausted the administrative remedies available under [section 11] before having standing to initiate an independent lawsuit.

Section 15. Jurisdiction — venue — standing — respondent — time limit — expedited hearing. In any lawsuit initiated pursuant to [sections 1 through 18]:

(1) the lawsuit must be brought in the district court in the county in which the claimant's employer maintains a place of business;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under [sections 1 through 18] or by the state attorney general as provided in [section 13];

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to [sections 1 through 18]; and

(5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

Section 16. Court remedies. (1) In a lawsuit initiated pursuant to [sections 1 through 18], the court may provide one or more of the following remedies:

(a) require the employer to comply with the provisions of [sections 1 through 18];

(b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer's violation; or

(c) if the court finds that the employer's violation was done willfully, as defined in 1-1-204, require the employer to pay compensation under subsection (1)(b) as liquidated damages.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under [sections 1 through 18].

Section 17. Special revenue account for payment to claimants. (1) There is an account in the state special revenue fund to the credit of the department of justice for the payment of compensation awarded by a court pursuant to [section 16].

(2) In a lawsuit by the state attorney general under [section 13], if paid compensation or liquidated damages are awarded, the money awarded must be deposited in the state special revenue account and be paid from the account directly to the complainant on order of the state attorney general.

(3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70, chapter 9, part 8.

Section 18. Rulemaking authority. The department and the department of justice may adopt rules to implement the provisions of [sections 1 through 18].

Section 19. Section 2-16-112, MCA, is amended to read:

“2-16-112. Absence from the state. ~~No~~ *Except as provided in [section 8],* an officer mentioned in 2-16-111(1) ~~and no~~ or an officer appointed by the governor and confirmed by the senate ~~must~~ *may not be* absent ~~himself~~ from the state for more than 60 consecutive days unless ~~upon~~ *on* business of the state or with the consent of the legislature.”

Section 20. Section 2-16-501, MCA, is amended to read:

“2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent’s ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent’s office are required to be discharged;
- (6) *except as provided in [section 8],* absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent’s ceasing to discharge the duty of the incumbent’s office for the period of 3 consecutive months, except when prevented by sickness, ~~or~~ when absent from the state by permission of the legislature, *or as provided in [section 8];*
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent’s official duties;
- (9) the incumbent’s refusal or neglect to file the incumbent’s official oath or bond within the time prescribed;
- (10) the decision of a competent tribunal declaring void the incumbent’s election or appointment.”

Section 21. Section 7-4-2208, MCA, is amended to read:

“7-4-2208. Absence of county officers from state. (1) ~~Except as provided in~~ *Subject to subsection (2) and except as provided in [section 8],* if a county officer ~~must in no case~~ is absent ~~himself~~ from the state for a period of more than 60 days ~~and or~~ for ~~no~~ a period longer than 15 days without the consent of the board of county commissioners, ~~and if he does so absent himself, he the officer forfeits his the office.~~

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.”

Section 22. Section 10-1-604, MCA, is amended to read:

~~“10-1-604. Leave of absence of Paid military leave for public employees attending training camp or similar training program.~~ (1) A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months ~~shall must~~ be given leave of absence with pay ~~for a period of time not to exceed~~ accruing at a rate of 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States performing military service.

(2) ~~This~~ Military leave may not be charged against the employee's annual vacation time.

(3) *Unused military leave must be carried over to the next calendar year, but may not exceed a total of 30 days in any calendar year.*

Section 23. Section 10-1-615, MCA, is amended to read:

“10-1-615. Misdemeanor violations. A person who violates ~~10-1-603,~~ 10-1-613; or 10-1-614 is guilty of a misdemeanor.”

Section 24. Section 19-2-707, MCA, is amended to read:

“19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. *Contributions, benefits, and service credit for state active duty are governed by the Montana Military Service Employment Rights Act provided in [sections 1 through 18].*”

Section 25. Section 39-51-1214, MCA, is amended to read:

“39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

(e) if the base period employer is ordered to ~~state or federal active duty in the national guard or reserves~~ military service, as defined in [section 3].”

Section 26. Section 39-51-2302, MCA, is amended to read:

“39-51-2302. Disqualification for leaving work without good cause.

(1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

(c) employment because of being ~~called~~ *ordered* to ~~active~~ military ~~duty to serve in the United States armed forces~~ service, as defined in [section 3], for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the ~~active~~ military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204.”

Section 27. Repealer. Sections 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226, 10-2-227, and 10-2-228, MCA, are repealed.

Section 28. Instructions to code commissioner. Section 10-1-604 is intended to be renumbered and codified as an integral part of [sections 1 through 18], and the provisions of [sections 1 through 18] apply to section 10-1-604.

Section 29. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 18].

Section 30. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 382

[SB 119]

AN ACT REVISING CHILD PROTECTIVE SERVICES AND ADOPTION STATUTES IN COMPLIANCE WITH FEDERAL REGULATIONS AND AN ATTORNEY GENERAL'S OPINION; CLARIFYING WHO MAY BE

APPOINTED AS A GUARDIAN AD LITEM; AUTHORIZING A FOSTER CARE REVIEW COMMITTEE OR A CITIZEN REVIEW BOARD TO CONDUCT A PERMANENCY HEARING SUBJECT TO APPROVAL BY THE COURT AND ABSENT OBJECTION BY A PARTY TO THE PROCEEDING; AMENDING SECTIONS 41-3-112, 41-3-115, 41-3-201, 41-3-202, 41-3-438, 41-3-443, 41-3-445, 41-3-1010, AND 42-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-112, MCA, is amended to read:

“41-3-112. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint *a guardian ad litem* for any child alleged to be abused or neglected ~~a guardian ad litem~~. The department or any *member* of its staff *who has a direct conflict of interest* may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) *The guardian ad litem must have received appropriate training that is specifically related to serving as a child’s court-appointed representative.*

(2)(3) The guardian ad litem is charged with the representation of the child’s best interests and shall perform the following general duties:

(a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child’s siblings and parents or custodians;

(d) to make written reports to the court concerning the child’s welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child’s welfare;

(f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child’s rights.

~~(3)~~(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem’s opinion as to the best interests of the child.

(4)(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.”

Section 2. Section 41-3-115, MCA, is amended to read:

“41-3-115. Foster care review committee — *foster care reviews* — *permanency hearings*. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. *The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.*

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than ~~five~~ *three* or more than seven members. *To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.*

(b) The members must include:

~~(a)(i) a~~ *one* representative of the department *who may not be responsible for the placement of the child or have any other direct conflict of interest;*

~~(b) a representative of the youth court;~~

~~(c)(ii) someone~~ *a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and*

~~(d) a representative of a local school district;~~

~~(e)(iii) if the child whose care is under review is an Indian child, someone a person,~~ preferably an Indian person, *who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review; and*

~~(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.~~

(c) *Members may also include but are not limited to:*

(i) *a representative of the youth court;*

(ii) *a representative of a local school district;*

(iii) *a public health nurse;*

(iv) *an at-large community member with knowledge of child protective services.*

~~(2)(3)~~ (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within ~~a~~ *the* time limit established by the department. ~~The time limit must comply with~~ under the Adoption and Safe Families Act of 1997, as enacted 42 U.S.C. 675(5).

(b) *The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:*

(i) *the safety, history, and specific needs of the child;*

(ii) *whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;*

(iii) *whether appropriate services have been available to the child and family on a timely basis; and*

(iv) *the results of intervention.* (c) *The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.*

~~(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department with a written~~

~~report of its findings and recommendations for further action by the youth court or the department.~~

~~(4) The department shall adopt rules necessary to carry out the purposes of this section. The rules must provide for policies and procedures consistent with the provisions regarding notice, written findings and recommendations, conflict of interest, recordkeeping, sibling reviews, disclosure and immunity under 41-3-1010, and the deliberation provisions of 41-3-1012.~~

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

- (i) the parents of the child or their attorneys;*
- (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;*
- (iii) the child who is the subject of the review if the child is 12 years of age or older;*
- (iv) the child's attorney, if any;*
- (v) the guardian ad litem;*
- (vi) the court-appointed attorney or special advocate of the child; and*
- (vii) the child's Indian tribe if the child is an Indian.*

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

- (a) the continuing need for the placement and the appropriateness and safety of the placement;*
- (b) compliance with the case plan;*
- (c) the progress that has been made toward alleviating the need for placement;*
- (d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.*

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

~~(5)~~(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

~~(6)~~(9) The committee is subject to the call of the ~~youth~~ *youth district* court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the ~~youth~~ *youth district* court."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services ~~or its local affiliate~~.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioners and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy;

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or *the* priest in that person's capacity as a member of the clergy or *as a* priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or *the* priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or *the* priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 4. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours ~~develop~~ *result in the development of* independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If ~~a child~~ *an interview of the child* is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department ~~through its local office.~~

Section 5. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency ~~plan~~ hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-443, MCA, is amended to read:

"41-3-443. Treatment plan — contents — changes. (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

(c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency ~~plan~~ hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

Section 7. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency ~~plan~~ hearing must be held by the court *or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:*

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); ~~and or~~

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court *or the court-approved entity holding the permanency hearing* shall conduct a hearing and ~~make the court shall issue a finding as to~~ whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency ~~plan~~ hearing is not required if the proceeding has been dismissed, the child was not removed from the home, ~~or~~ the child has been returned to the child's parent or guardian, *or the child has been legally adopted or appointed a legal guardian.*

(c) The permanency ~~plan~~ hearing may be combined with a hearing that is required in other sections of this part *or with a review held pursuant to 41-3-115 or 41-3-1010* if held within the *applicable* time limits ~~of that section~~. If a permanency ~~plan~~ hearing is combined with another hearing *or a review*, the requirements of the court related to the disposition of the other hearing *or review* must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency ~~plan~~ hearing, the department ~~and the guardian ad litem~~ shall ~~each~~ submit a report regarding the child to the ~~court~~ *entity that will be conducting the hearing* for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency ~~plan~~ hearing, *the guardian ad litem or an attorney or advocate for a parent or guardian* may submit an informational report to the ~~court~~ *entity that will be conducting the hearing* for review.

(4) *(a) The court's order must be issued within a reasonable time 20 days after the permanency ~~plan~~ hearing if the hearing was conducted by the court. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.*

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(5) The court shall approve a specific permanency plan for the child and make written findings on:

(a) *whether the permanency plan is in the best interests of the child;*

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

~~(5)~~(6) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection ~~(6)~~ (7) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(6)~~(7) Permanency options include:

- (a) reunification of the child with the child's parent or guardian;
- (b) adoption;
- (c) appointment of a guardian pursuant to 41-3-444; or
- (d) long-term custody if the child is in a planned permanent living arrangement established by a preponderance of the evidence, which is reflected in specific findings by the court, that:
 - (i) the child is being cared for by a fit and willing relative;
 - (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;
 - (iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;
 - (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or
 - (v) the child meets the following criteria:
 - (A) the child has been adjudicated a youth in need of care;
 - (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
 - (C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and
 - (D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(7)~~(8) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 8. Section 41-3-1010, MCA, is amended to read:

“41-3-1010. Review — scope — procedures — immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether caseworkers have diligently provided services;
- (iv) whether appropriate services have been available to the child and family on a timely basis; and
- (v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must ~~take place at times set by the board. The time limit must comply with~~ *be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).*

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the *Indian* child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or ~~placed for adoption~~ *by which a permanent placement will be finalized*;

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings, *but the court shall issue specific findings for each child.*

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

(11) *The board may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445."*

Section 9. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records — nonidentifying and identifying information — consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent;

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; ~~and~~

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe; *and*

(d) *identifying information to authorized personnel during a federal child and family services review.*

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 383

[SB 121]

AN ACT REMOVING THE RESTRICTION ON LIABILITY OF RESIDENTS OF MONTANA STATE HOSPITAL AND CERTAIN OTHER STATE INSTITUTIONS TO PAY FOR CARE PROVIDED TO THE RESIDENTS UNDER ANY PROVISION OF A CRIMINAL STATUTE; AMENDING SECTION 53-1-409, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-409, MCA, is amended to read:

“53-1-409. Limitations on liability of resident or financially responsible person for cost of care. (1) The resident or financially responsible person is liable only for the cost of care that the department has determined that the person is able to pay and for which the department has billed the resident or financially responsible person. If the amount payable is retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person shall pay only the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of a long-term resident may not be required to pay for the resident’s cost of care in an amount exceeding the cost of caring for a normal child at home as determined and updated annually by the department based upon the annual cost of raising a child, as estimated by the United States department of agriculture.

(3) The natural or adoptive parents of a long-term resident may not be required to pay for the resident’s cost of care for periods after the resident attains 18 years of age.

~~(4) (a) A resident or financially responsible person is not financially liable for care provided to a resident under any provision of a criminal statute.~~

~~(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical dependency treatment center.~~

~~(5)~~(4) This section may not be construed to reduce the liability of a third party for a resident’s full cost of care as provided in this part.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 384

[SB 123]

AN ACT REVISING REQUIREMENTS GOVERNING SPECIAL FUEL PERMITHOLDERS AND SPECIAL FUEL USERS; REQUIRING THAT SPECIAL FUEL PERMITHOLDERS USE FUEL ON WHICH STATE TAX HAS BEEN PAID; REQUIRING THAT MATERIAL USED FOR CONSTRUCTION, RECONSTRUCTION, OR IMPROVEMENT IN CONNECTION WITH WORK PERFORMED UNDER A PUBLIC CONTRACT BE PRODUCED USING SPECIAL FUEL ON WHICH STATE FUEL TAX HAS BEEN PAID; EXEMPTING SPECIAL FUEL PERMITHOLDERS FROM CERTAIN RECORDKEEPING REQUIREMENTS; INCREASING THE CIVIL

PENALTIES FOR USING DYED SPECIAL FUEL ON THE PUBLIC ROADS AND HIGHWAYS; ELIMINATING THE MISDEMEANOR PENALTY FOR USING DYED FUEL; AND AMENDING SECTIONS 15-70-302, 15-70-321, 15-70-323, 15-70-325, 15-70-330, 15-70-356, AND 15-70-372, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-302, MCA, is amended to read:

“15-70-302. Special fuel user’s permits required — exceptions. (1) (a) A special fuel user shall obtain a special fuel user’s permit annually from the department; prior to the use of special fuel:

~~(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation;~~

~~(ii)~~(i) by a special fuel user awarded a contract *or subcontract* in accordance with 15-70-321; or

~~(iii)~~(ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user’s courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, ~~scale house personnel, motor carrier services enforcement officers and gross vehicle weight patrol crews~~ *motor carrier services patrol officers*. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user’s permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

(4) A special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid.”

Section 2. Section 15-70-321, MCA, is amended to read:

“15-70-321. (Temporary) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.*

15-70-321. (Effective on occurrence of contingency) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions;

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state; and

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in subsections (1)(a) through (1)(c) is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a).

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.* (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

15-70-321. (Effective July 1 of fourth year following date of occurrence of contingency) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause

to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.*

Section 3. Section 15-70-323, MCA, is amended to read:

“15-70-323. Special fuel user’s records. (1) ~~Every~~ *Except as provided in subsection (3), every* special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep records, receipts, and invoices and other pertinent papers that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

(3) *A special fuel user who is required to obtain a permit under 15-70-302 is exempt from the provisions of this section if the user uses fuel on which state fuel tax has been paid and if the user does not request a motor fuel tax refund.*

Section 4. Section 15-70-325, MCA, is amended to read:

“15-70-325. Returns. (1) For the purpose of determining the amount of liability for special fuel tax, each special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

(2) ~~Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user’s annual tax liability is or will be \$200 or less.~~

(3) ~~The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual or quarterly, must contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of perjury. The declarations have the same~~

force and effect as a verification. The return must show the information that the department may reasonably require for the proper administration and enforcement of this part.

~~(4)~~(3) The special fuel user shall file the return on or before the last day of the next calendar month following the period to which it relates; ~~provided, however, that. However,~~ for good cause, the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days."

Section 5. Section 15-70-330, MCA, is amended to read:

"15-70-330. Special fuel penalties. (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless ~~the fuel is subject to taxation under 15-70-321(1)(b) or~~ the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under ~~15-70-372 for the first offense 15-70-372(2). A subsequent offense is a misdemeanor punishable as provided in 15-70-336.~~ Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

Section 6. Section 15-70-356, MCA, is amended to read:

"15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used *if the person has records, as provided in 15-70-323, to prove nontaxable use.* The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled

to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

Section 7. Section 15-70-372, MCA, is amended to read:

"15-70-372. Civil ~~penalty penalties~~. ~~The~~ *Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.*

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation of the provisions of 15-70-330(3)."

Approved April 25, 2005

CHAPTER NO. 385

[SB 131]

AN ACT PROHIBITING THE IMPORTATION, SALE, OFFERING FOR SALE, AND DISPENSING OF GASOLINE CONTAINING METHYL TERTIARY BUTYL ETHER IN AMOUNTS THAT EXCEED ALLOWABLE TRACE LEVELS; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE

BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AUTHORIZING ADMINISTRATIVE PENALTIES AND INJUNCTIONS; AMENDING SECTIONS 82-15-102, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-102, MCA, is amended to read:

“82-15-102. Enforcement of part — rules. *(1) This Except as provided in subsection (2), this part shall must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.*

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether.”

Section 2. Section 82-15-104, MCA, is amended to read:

“82-15-104. Department Departments authorized to employ laboratory for testing. *The department and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a laboratory having that has sufficient facilities to make tests of petroleum products as required and may pay reasonable compensation for the analyses and tests made by it the laboratory.”*

Section 3. Section 82-15-106, MCA, is amended to read:

“82-15-106. Refusing, suspending, and revoking licenses — hearing required. *The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing noticed for which notice was provided for not less than 10 days. Violation of any provision of this part, except 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which that the department considers just and proper appropriate.”*

Section 4. Section 82-15-110, MCA, is amended to read:

“82-15-110. Unlawful acts. *It is unlawful to:*

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same meter or device~~ has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make ~~hose~~ delivery from petroleum vehicle tanks *through a hose* unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor, the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device ~~which~~ *that* has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell; ~~or offer;~~ or expose for sale any petroleum product ~~which~~ *that* is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended; ~~or~~

(8) *import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a).*"

Section 5. Section 82-15-111, MCA, is amended to read:

"82-15-111. Penalty for violations. A person who *purposely, knowingly, or negligently* violates any of the provisions of this part, *except 82-15-110(8)*, or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

Section 6. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether — notice requirements — hearing — penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the department of environmental quality's order. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the department of environmental quality's order.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [section 6].

Section 8. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 386

[SB 137]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; GRANTING RULEMAKING AUTHORITY REGARDING STANDARDS FOR SANITATION AND SAFETY, LICENSING, ENFORCEMENT PROCEDURES, AND FEES; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF TATTOOING AND BODY-PIERCING LAWS; PROVIDING FOR THE DENIAL AND CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY HEALTH AUTHORITIES; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR THE DEPARTMENT TO USE IN ADMINISTERING THE LAWS; AMENDING SECTIONS 45-5-623, 50-1-202, 50-2-116, AND 50-2-130, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The regulation of tattooing and body-piercing establishments is required to protect the public health and safety.

Section 2. Definitions. As used in [sections 1 through 15], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in 50-2-101.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrology as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.

Section 3. Rulemaking authority. The department shall adopt and enforce minimum safety and sanitation requirements for tattooing and body piercing, including rules to:

(1) set standards to ensure sanitation and safety in establishments to protect the public health and safety;

(2) license establishments;

(3) provide procedures for enforcement of the laws and rules relating to establishments, including implementing plans of correction;

(4) impose fees for licensure, inspection, enforcement, training, and administration.

Section 4. Licensure and regulation by local boards of health. (1) A local board of health may implement its own licensure and regulatory program for tattooing and body-piercing establishments independent of that of the department. A local board of health's licensure and regulatory program must be operated in lieu of the department's licensure and regulatory program.

(2) Subject to the restrictions in 50-2-130, a local board of health that operates its own licensure and regulatory program pursuant to subsection (1) may adopt necessary regulations that are not less stringent than department rules adopted under [section 3]. The rules may include:

(a) standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) licensure of establishments;

(c) procedures for enforcement of the laws and rules relating to establishments, including the implementation of plans of correction; and

(d) fees that reflect and may not exceed the actual costs incurred for licensure, inspection, enforcement, training, and administration.

(3) The local board of health shall report annually to the department on the number of establishments that it licenses and regulates.

Section 5. Injunctions. A regulatory authority may bring an action for an injunction against any continued violation of [sections 1 through 15] or any rule adopted under [section 3 or 4].

Section 6. County attorney to prosecute violations. When a regulatory authority furnishes evidence to the county attorney of a county in this state where the violating establishment operates, the county attorney shall prosecute any person violating [sections 1 through 15] or any rule adopted under [section 3 or 4].

Section 7. Penalties — misdemeanor. A person who purposefully or knowingly violates any provision of [sections 1 through 15] or rules adopted under [section 3 or 4] is guilty of a misdemeanor. Upon conviction, the person shall be fined:

(1) an amount of not less than \$50 or more than \$100 for the first offense;

(2) an amount of not less than \$75 or more than \$200 for the second offense; and

(3) an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

Section 8. Civil penalties — injunctions not barred. (1) An establishment that violates [sections 1 through 15] or rules adopted under [section 3 or 4] is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action to impose civil penalties under this section does not bar actions for injunctions to enforce compliance with [sections 1 through 15] or to enforce compliance with a rule adopted under [section 3 or 4].

Section 9. Costs and expenses — recovery by regulatory authority. In a civil action initiated by the regulatory authority under [section 5 or 8], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through 15] or a rule adopted under [section 3 or 4] to pay the costs of investigations and any other expenses incurred. These costs are limited to the direct costs of investigations and other expenses.

Section 10. License required — fees — application. (1) A person operating an establishment shall procure an annual license from the appropriate regulatory authority having jurisdiction. For each annual license, the regulatory authority shall collect a fee established by rule pursuant to [section 3 or 4].

(2) A separate license is required for each establishment operating on different premises.

(3) A person operating a multiple-type establishment shall procure separate licenses for body piercing and tattooing businesses.

(4) An application for a license must be made to the department on forms containing the information required by the department.

(5) Licenses are not transferable.

Section 11. Late fee — allocation of licensure and late fees. (1) A person operating an establishment who fails to renew a license issued by the department by the expiration date and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual fee required by [section 10]. Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(2) The department shall deposit the fees collected under [section 10] and subsection (1) of this section in the state special revenue account provided for in [section 15].

Section 12. Denial or cancellation of license by regulatory authority — multiple-type establishments. (1) The regulatory authority may deny or cancel a license it issues if it finds, after proper investigation, that the applicant or licensee is not in compliance with [sections 1 through 15] or a rule adopted under [section 3 or 4] and the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When a multiple-type establishment is licensed, the denial or cancellation may affect both tattooing and body-piercing operations or only one of the operations, as determined by the regulatory authority.

Section 13. Notice and hearing required for license denial or cancellation. (1) A license may not be denied or canceled by the regulatory authority without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the regulatory authority to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing conducted by the department must be held in accordance with the contested case procedures of the Montana Administrative Procedure Act.

Section 14. Health officers to make investigations and inspections — free access. (1) State and local health officers or their designees shall conduct investigations and inspections of establishments.

(2) State and local health officers or their designees must be provided access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under subsection (1).

(3) If a local board of health inspection and regulatory program is being operated in lieu of a department program, the local board of health and not the department has the duty and authority provided in this section.

Section 15. State special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through 15] and the rules adopted under [section 3].

Section 16. Section 45-5-623, MCA, is amended to read:

“45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos or provides a body piercing on a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, “tattoo” ~~has~~ and “body piercing” have the meaning provided in ~~50-2-116~~ [section 2]. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)”

Section 17. Section 50-1-202, MCA, is amended to read:

“50-1-202. General powers and duties. The department:

(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) shall make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, shall administer any federal health program for which responsibilities are delegated to states;

(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) shall conduct health education programs;

(10) shall provide consultation to school and local community health nurses in the performance of their duties;

(11) shall consult with the superintendent of public instruction on health measures for schools;

(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

- (a) diagnosis;
- (b) medical, surgical, and corrective treatment;
- (c) aftercare and related services; and
- (d) eligibility;

(13) shall provide consultation to local boards of health;

(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) shall accept and expend federal funds available for public health services;

(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) shall adopt and enforce rules regarding the reporting and control of communicable diseases;

(19) shall adopt and enforce rules regarding the transportation of dead human bodies;

(20) shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems;

~~(21) shall adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease; and~~

(22)(21) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."

Section 18. Section 50-2-116, MCA, is amended to read:

“50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;

(b) furnish treatment for persons who have communicable diseases;

(c) prohibit the use of places that are infected with communicable diseases;

(d) require and provide means for disinfecting places that are infected with communicable diseases;

(e) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(f) contract with another local board for all or a part of local health services;

(g) reimburse local health officers for necessary expenses incurred in official duties;

(h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(i) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

(j) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; *and*

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; ~~and~~

~~(vi)(k) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors. subject to the provisions of 50-2-130 and [sections 1 through 15], adopt necessary regulations that are not less stringent than state standards for tattooing and body piercing establishments; and~~

~~(k)(l)~~ adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

Section 19. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(j)(iii), ~~or~~ (2)(j)(v), *or* (2)(k) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(j)(iii), ~~or~~ (2)(j)(v), *or* (2)(k) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply

with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 20. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 15].

Section 21. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 387

[SB 138]

AN ACT REVISING LAWS RELATED TO THE FLATHEAD BASIN COMMISSION; INCREASING THE NUMBER OF COMMISSION MEMBERS; MAKING PERMANENT THE ATTACHMENT OF THE FLATHEAD BASIN COMMISSION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-3330, MCA; REPEALING SECTION 4, CHAPTER 537, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3330, MCA, is amended to read:

"2-15-3330. ~~(Temporary)~~ Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of ~~21~~ 23 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff;

(b) one member ~~who is~~, *appointed by the director of the department of natural resources and conservation, or the director's designee representing the northwestern land office of the department of natural resources and conservation;*

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of *the* interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) ~~four~~ *five* ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; *a representative of the Bonneville power administration*; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) ~~two~~ *three* ex officio members who are *the director of the department of natural resources and conservation*, the director of the department of environmental quality, and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only. (~~Amendment and renumbering terminate June 30, 2005—sec. 4, Ch. 537, L. 2003. On July 1, 2005, this section reverts to its previous MCA designation of 2-15-213.~~)

Section 2. Repealer. Section 4, Chapter 537, Laws of 2003, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 388

[SB 164]

AN ACT DESIGNATING MAIN STREET IN BILLINGS AS THE RICHARD DEAN ROEBLING MEMORIAL HIGHWAY; AND DIRECTING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS RECOGNIZING THE DESIGNATION.

WHEREAS, statistics compiled by the Montana Department of Transportation indicate that in the last 2 years, nearly 40% of all fatal accidents involving motor vehicles were alcohol-related accidents; and

WHEREAS, the 97 fatalities that resulted from alcohol-related crashes in 2003 serve as a painful reminder of the need to promote highway safety; and

WHEREAS, in 1997, the 55th Legislature recognized the dangers that motor vehicles posed to individuals engaged in highway construction and maintenance work; and

WHEREAS, in an effort to mitigate the dangers, the 55th Legislature enacted a bill that doubled penalties for traffic violations in highway construction and work zones; and

WHEREAS, in 2003, to further protect highway workers, the 58th Legislature created the offense of reckless endangerment of a highway worker; and

WHEREAS, despite legislative efforts and a public information campaign initiated by the Department of Transportation to warn the driving public to drive slowly and carefully through highway construction and work zones, accidents have occurred in these areas; and

WHEREAS, in June 2004, 38-year-old father of two Richard Dean Roebling, a road engineer employed on a road reconstruction project on Main Street in Billings, was struck and killed by an intoxicated driver; and

WHEREAS, it is appropriate that Main Street in Billings bear the name of Mr. Roebling to commemorate Mr. Roebling's life and service to the community of Billings, to recognize the valuable contributions of highway construction workers in Yellowstone County and throughout the state, and to remind motorists of the dangers of drunk driving and the importance of driving carefully through highway construction and work zones.

Be it enacted by the Legislature of the State of Montana:

Section 1. Richard Dean Roebling memorial highway. (1) The portion of U.S. highway 87 known as "Main Street" in Billings is established as the Richard Dean Roebling memorial highway for commemorative purposes only.

(2) The department shall provide appropriate markers to recognize the name of the highway but may not erect more than three markers along the highway.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Approved April 25, 2005

CHAPTER NO. 389

[SB 183]

AN ACT CLARIFYING THE DUTIES OF REAL ESTATE BROKERS OR SALESPERSONS ACTING AS PROPERTY MANAGERS; REQUIRING COMPLIANCE WITH PROPERTY MANAGEMENT STATUTES AND RULES; REQUIRING DISCLOSURE NOTICE; PROVIDING FOR LICENSE REVOCATION OR SUSPENSION FOR FAILURE TO COMPLY WITH PROPERTY MANAGEMENT STATUTES, RULES, AND DISCLOSURE REQUIREMENTS; PROVIDING AN EXEMPTION FROM BEING LICENSED AS A PROPERTY MANAGER; AND AMENDING SECTIONS 37-51-313, 37-51-314, 37-51-321, AND 37-51-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the

common law as applied to these relationships. The terms “buyer agent”, “dual agent” and “seller agent”, as used in this chapter, are defined in 37-51-102 and are not related to the term “agent” as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent;

(d) safeguard the seller’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller’s objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent;

(d) safeguard the buyer’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer’s objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

~~(8)~~(9) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(9)~~(10) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

~~(10)~~(11) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 2. Section 37-51-314, MCA, is amended to read:

"37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) *A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.*

(9) *When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies*

with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

~~(8)~~(10) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

~~(9)~~(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction."

Section 3. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, ~~which if the~~ advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; ~~or~~

(t) conviction of a felony;

(u) *failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or*

(v) *failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.*

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons

who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Section 4. Section 37-51-602, MCA, is amended to read:

"37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

- (a) a relative of the owner of the real estate, defined as follows:
 - (i) a son or daughter of the property owner or a descendant of either;
 - (ii) a stepson or stepdaughter of the property owner;
 - (iii) a brother, sister, stepbrother, or stepsister of the property owner;
 - (iv) the father or mother of the property owner or the ancestor of either;
 - (v) a stepfather or stepmother of the property owner;
 - (vi) a son or daughter of a brother or sister of the property owner;
 - (vii) a brother or sister of the father or mother of the property owner;
 - (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or
 - (ix) the spouse of the property owner;
- (b) a person who leases no more than four residential real estate units;
- (c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.
- (d) an attorney at law in the performance of duties as an attorney;
- (e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;
- (f) an officer of the state or any of its political subdivisions in the conduct of official duties;
- (g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;
- (h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;
- (i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or
- (j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson *and without holding a separate property manager's license.*"

Approved April 25, 2005

CHAPTER NO. 390

[SB 196]

AN ACT ADOPTING THE "GUS BARBER ANTISECRECY ACT"; PROHIBITING A FINAL ORDER OR JUDGMENT OR WRITTEN FINAL SETTLEMENT AGREEMENT THAT CONCEALS A PUBLIC HAZARD; PROVIDING CERTAIN EXCEPTIONS; PROHIBITING AGREEMENTS OR CONTRACTS THAT CONCEAL INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited. (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product, or a condition of a device, instrument, or manufactured product, that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

- (a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;
- (b) other information that is confidential under state or federal law; or
- (c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 6, part 1, and the provisions of Title 2, chapter 6, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to causes of action filed after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 391

[SB 197]

AN ACT REVISING PENSION BENEFITS FOR VOLUNTEER FIREFIGHTERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; ALLOWING CERTAIN MEMBERS TO RETURN TO VOLUNTEER SERVICE WITHOUT LOSS OF BENEFITS; CLARIFYING THE CALCULATION OF BENEFITS AFTER 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) *A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire department without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit.*

Section 2. Section 19-17-404, MCA, is amended to read:

"19-17-404. Amount of pension and disability benefits. (1) Each eligible member must receive a pension or disability benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is \$150 a month.

(b) A partial pension benefit is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member ~~who has completed 20 years of service and is at least 55 years of age and who continues~~ *continued* to be an active member *after completing 20 years of service* must be increased by \$7.50 a month for each additional year of active service *the member completed after 20 years of service*, up to 30 total years of service.

(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.

(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 392

[SB 231]

AN ACT REVISING LAWS RELATED TO JUDGMENTS AND THE COLLECTION OF JUDGMENTS; PROVIDING THAT DISHONORED OR FRAUDULENT PAYMENTS OF PROPERTY TAXES ARE SUBJECT TO THE PENALTIES FOR OTHER DISHONORED OR FRAUDULENT PAYMENTS; CLARIFYING THAT A REGISTERED PROCESS SERVER MAY MAKE

SERVICE OF PROCESS IN ANY COUNTY IN THIS STATE; REVISING THE PROCEDURE FOR RETURNING A SUMMONS, PROCESS, OR ORDER; PROVIDING THAT INTEREST ON JUDGMENTS ALSO APPLIES TO THE COST OF OBTAINING OR ENFORCING A JUDGMENT; PROVIDING THAT SERVICE OF PROCESS MAY BE MAILED OUT OF STATE, AT THE DIRECTION OF A THIRD PARTY, IF THE THIRD PARTY PROCESSES GARNISHMENTS OR LEVIES FROM A LOCATION OUTSIDE THE STATE; PROVIDING THAT THE STATUTE OF LIMITATIONS FOR THE LIABILITY FOR ISSUING A DISHONORED PAYMENT IS 6 YEARS FROM THE DATE OF THE DEMAND FOR PAYMENT OF A SERVICE CHARGE; CLARIFYING THAT AN OBLIGATION IS TRANSFERABLE PROPERTY AND PROVIDING FOR THE DISCHARGE OF A TRANSFERRED OBLIGATION; AND AMENDING SECTIONS 15-16-403, 25-1-1101, 25-3-301, 25-9-205, 25-13-402, 27-1-717, AND 28-1-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-403, MCA, is amended to read:

“15-16-403. Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year. *A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of real property taxes is subject to the liability provided in 27-1-717 if the instrument is dishonored or if the issuer stops payment with the intent to fraudulently defeat a possessory lien or defraud the payee.*”

Section 2. Section 25-1-1101, MCA, is amended to read:

“25-1-1101. Registered process server — levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which ~~he~~ *the person* resides or ~~has his~~ *in which the person’s* principal place of business is located. *A registered process server may make service of process in any county in this state.*

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of ~~his~~ employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.”

Section 3. Section 25-3-301, MCA, is amended to read:

“25-3-301. Time and manner of return. (1) ~~It shall be the duty of the~~ *The* sheriff or other person serving a summons or other process or order required by any of the provisions of ~~this code law~~, issued ~~out of~~ *for* any of the district courts of this state, ~~to~~ *shall* make due and legal return of ~~such the~~ service and file the ~~same~~ *return* with the clerk of the court in which ~~such the~~ action or proceeding is pending. *The return must be made within not more than 10 days after the making of such the service where if the same service was made in the county in which such the action or proceeding is pending and not more than within 15 20 days after the making of such the service when the same service was made*

outside of the county in which ~~such~~ *the* action or proceeding is pending. Any failure to make and file ~~such~~ *the* return ~~as required~~ may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose ~~his~~ a return of ~~such~~ process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, ~~prepaying~~ postage *prepaid*.

(3) *In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, postage prepaid, and deposit it in the post office addressed to the officer, agent, or attorney who sent it.*

Section 4. Section 25-9-205, MCA, is amended to read:

“25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state *and on the cost incurred to obtain or enforce a judgment* at the rate of 10% per annum ~~and no greater rate year. Such~~ The interest ~~must~~ may not be compounded ~~in any manner or form~~.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.”

Section 5. Section 25-13-402, MCA, is amended to read:

“25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

- (i) levying on a sufficient amount of property, if there is sufficient property;
- (ii) collecting or selling the things in action; and
- (iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. *Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state.* If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions.”

Section 6. Section 27-1-717, MCA, is amended to read:

“27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment — civil liability — statute of limitations. (1) A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee’s assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than \$30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than \$500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3). *The statute of limitations for the liability created under this section is 6 years from the date of the demand under subsection (2).*

(7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section."

Section 7. Section 28-1-1001, MCA, is amended to read:

"28-1-1001. Rights arising out of obligation transferable. A right arising out of an obligation is the property of the person to whom it is due and may be transferred as ~~such~~ *the property of that person. Unless otherwise provided by law, a transfer by written, oral, electronic, or other means creates a valid assignment upon the transfer.*"

Approved April 25, 2005

CHAPTER NO. 393

[SB 245]

AN ACT REVISING RESORT AREA DISTRICT BOARD ELECTION LAWS; PROVIDING A PROCESS FOR EXTENDING AN EXISTING RESORT AREA DISTRICT; PROVIDING FOR DIRECT APPOINTMENT OF A BOARD MEMBER IF NO CANDIDATE HAS FILED A NOMINATION PETITION AND REQUIRING SUBSEQUENT ELECTION OF THAT BOARD MEMBER; REQUIRING A SUBSEQUENT ELECTION OF A BOARD MEMBER APPOINTED TO FILL A VACANCY; AND AMENDING SECTIONS 7-6-1541, 7-6-1544, AND 7-6-1546, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-1541, MCA, is amended to read:

“7-6-1541. General powers of resort area district. (1) A resort area district created under 7-6-1531 through 7-6-1550 may:

- (a) have perpetual succession;
- (b) sue and be sued in any court of competent jurisdiction;
- (c) acquire by any legal means real and personal property necessary to the full exercise of its powers; and
- (d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers.

(2) (a) *The board for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the voters. If the electorate extends the term of the resort area district, the provisions of this part continue to apply.*

(b) *The board may not submit a question to the voters to extend the term of a resort area district until the expiration of at least half the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.*

~~(2)~~(3) The board shall exercise the powers described in 7-6-1531 through 7-6-1550.”

Section 2. Section 7-6-1544, MCA, is amended to read:

“7-6-1544. Resort area district board — election — term. (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed at least 135 days and not fewer than 75 days before the election.

(3) (a) *If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.*

(b) *An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of votes cast in the election, the*

appointee's term expires, and the board shall initiate the process described in this subsection (3).

(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years."

Section 3. Section 7-6-1546, MCA, is amended to read:

"7-6-1546. Resort area district board — vacancy. (1) If a vacancy on the board occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

(2) *An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1).*"

Approved April 25, 2005

CHAPTER NO. 394

[SB 248]

AN ACT REVISING THE PENALTY FOR DRIVING WITHOUT MANDATORY MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING THAT FOR A SECOND OR SUBSEQUENT OFFENSE, UPON PRESENTING PROOF OF INSURANCE, A DRIVER MUST BE ISSUED A RESTRICTED REGISTRATION RECEIPT THAT ALLOWS THE MOTOR VEHICLE INVOLVED IN THE OFFENSE TO BE OPERATED ONLY FOR EMPLOYMENT PURPOSES; AMENDING SECTION 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates ~~for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction.~~ The receipt and plates may not be reinstated until ~~the expiration of that period and until~~ proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is

entitled to register the vehicle. *Upon proof of compliance with 61-6-301, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt and return the license plates to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes. Upon the expiration of the appropriate time period, the department shall issue a regular registration receipt to the owner of the vehicle. The department may establish fees for the restricted registration receipts issued pursuant to this subsection.*

(3) Upon a fourth ~~and~~ or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction."

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 395

[SB 259]

AN ACT PROVIDING THAT TRANSFER OF PROPERTY TO NONFEDERAL PUBLIC OWNERSHIP REQUIRES AN INSPECTION TO DETERMINE IF NOXIOUS WEEDS ARE PRESENT; REQUIRING THE INSPECTION INFORMATION BE SUBMITTED TO THE PURCHASER OR GRANTEE; REQUIRING THE ENTITIES TO DEVELOP A WEED MANAGEMENT AGREEMENT; REQUIRING THE WEED MANAGEMENT AGREEMENT TO BE PART OF THE PURCHASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public purchase or receipt of property — weed management plan. (1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor.

(2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed

management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement.

(3) The provisions of this section do not apply to:

(a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or

(b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367.

(4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 396

[SB 275]

AN ACT RELATING TO THE VOLUNTARY GENETICS PROGRAM; CHANGING THE NAME OF THE PROGRAM TO THE GENETICS PROGRAM; TEMPORARILY INCREASING THE GENETICS PROGRAM FEE; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR DEPOSIT OF THE FEE; AND AMENDING SECTIONS 33-2-712 AND 50-19-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-712, MCA, is amended to read:

“33-2-712. Genetics program fee. (1) Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay 70 cents the fee provided for in subsection (2) to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in the general an account in the state special revenue fund provided for in [section 3]. The purpose of the fee is may be used only to fund the voluntary statewide genetics program established in 50-19-211.

(2) (a) From [the effective date of this act] through June 30, 2007, the fee is \$1.

(b) Beginning July 1, 2007, the fee is 70 cents.”

Section 2. Section 50-19-211, MCA, is amended to read:

~~“50-19-211. Voluntary Statewide genetics program established.~~ (1) A combined, comprehensive ~~voluntary~~ statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

~~(1)(a)~~ (a) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

~~(2)(b)~~ (b) comprehensive *clinical and self-supporting laboratory* genetic services, *including but not limited to cytogenetics, DNA, and special chemistry*, to all areas of the state and all segments of the population;

~~(3)(c)~~ (c) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

~~(4)(d)~~ (d) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

~~(a)(i)~~ (i) the nature of genetic processes;

~~(b)(ii)~~ (ii) the inheritance patterns of genetic conditions; and

~~(c)(iii)~~ (iii) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

(2) *When the department contracts for genetics services under this section, it shall preferably contract with a single entity that is able to provide the combined, comprehensive program. The department and the contractor shall administer the contract in the most cost-effective means practicable.”*

Section 3. State special revenue account. There is an account in the state special revenue fund to the credit of the department to be used solely for the purposes provided in 50-19-211.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 50, chapter 19, part 2, and the provisions of Title 50, chapter 19, part 2, apply to [section 3].

Approved April 25, 2005

CHAPTER NO. 397

[SB 277]

AN ACT ESTABLISHING A SPECIAL FUEL USER'S AGRICULTURAL PRODUCT TEMPORARY TRIP PERMIT FOR A PERSON OPERATING A SPECIAL FUEL-POWERED VEHICLE OVER 26,000 POUNDS GROSS VEHICLE WEIGHT OR REGISTERED GROSS VEHICLE WEIGHT IN THE MOVEMENT OF THAT PERSON'S AGRICULTURAL PRODUCTS UPON THE PUBLIC ROADS AND HIGHWAYS OF THIS STATE; PROVIDING TERMS AND FEES FOR AGRICULTURAL PRODUCT TEMPORARY TRIP PERMITS; AMENDING SECTIONS 15-70-311 AND 15-70-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-311, MCA, is amended to read:

“15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit —

special fuel user's agricultural product temporary trip permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(3) *Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who is using the vehicle for the movement of that person's agricultural products, as defined in 80-11-101, and who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's agricultural product temporary trip permit. The permit is not valid for contract custom haulers. The permit is valid for a radius of 70 miles from a point specified on the permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule. A permit application may be submitted electronically, and the permit may be subsequently issued when the appropriate fee required in 15-70-312(3) is received by the permit issuer. Any costs associated with the electronic application process may be added to the total cost of the permit."*

Section 2. Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits — duration of temporary permits. (1) Temporary special fuel permits *issued under 15-70-311(1)* cost \$30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs \$30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

- (a) one truck suitable for hauling commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) *The cost of a special fuel user's agricultural product temporary trip permit for a person operating a vehicle in the movement of that person's agricultural products, as provided in 15-70-311(3), is:*

- (a) \$100 for a permit that is valid for 30 days from the date of issuance; or
- (b) \$300 for a permit that is valid for 3 months from the date of issuance.

(4) All fees collected must be remitted to the department or deposited directly in the state special revenue fund for the department.”

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 398

[SB 279]

AN ACT ALLOWING A MUNICIPALITY TO PROVIDE THAT A VIOLATION OF A CRIMINAL OFFENSE UNDER STATE LAW THAT IS PUNISHABLE ONLY BY A FINE IS A MUNICIPAL INFRACTION; AND AMENDING SECTION 7-1-4150, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4150, MCA, is amended to read:

“7-1-4150. Municipal infractions — civil offense. (1) A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed \$500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3) (a) A municipality may ~~by ordinance not~~ provide that a ~~violation of an ordinance is a municipal infraction if the violation is a~~ criminal offense under state law *that is punishable only by a fine is a municipal infraction.*

(b) *Statutory surcharges must be imposed, as provided in [3-1-317(1)(a),] 3-1-318(1), and 46-18-236(6)(a), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.*

(c) *A person may not be proceeded against for the same act or omission to act under both a municipal infraction ordinance and the corresponding state law criminal offense on which the municipal infraction ordinance is based.*

(4) An officer who is authorized by a municipality to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant’s last known mailing address, return receipt requested, or by publication, as provided in Rule 4D(5), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the municipal or city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

- (a) the name and address of the defendant;
- (b) the name or description of the infraction attested to by the officer issuing the citation;
- (c) the location and time of the infraction;
- (d) the amount of civil penalty to be assessed or the alternate relief sought, or both;
- (e) the manner, location, and time in which the penalty may be paid;

- (f) the time and place of court appearance; and
- (g) the penalty for failure to appear in court.”

Section 2. Coordination instruction. If legislation is not passed by the 59th legislature extending the duration of 3-1-317, then the bracketed reference in 7-1-4150(3)(b) is void.

Approved April 20, 2005

CHAPTER NO. 399

[SB 288]

AN ACT SPECIFYING THE CONDITIONS UNDER WHICH THE LOANS TO STATE AGENCIES MAY BE MADE UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has previously authorized various state agencies to borrow from the program authorized under the Municipal Finance Consolidation Act of 1983, Title 17, chapter 5, part 16, MCA, and commonly known as the INTERCAP program; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature desires to establish parameters for the future use of the INTERCAP program by state agencies to ensure that loans are properly authorized.

Be it enacted by the Legislature of the State of Montana:

Section 1. Specific loan authorization. The legislature intends that individual state agencies may borrow from the program established in this part, as specifically authorized by the legislature under the following conditions:

(1) A loan for which the security is an enterprise or internal service fund source may be approved by a simple majority vote of the legislature.

(2) A loan for which the security is a general fund appropriation, a general fund revenue source, or any type of tax or fee imposed by the legislature must be approved by a two-thirds vote of the members of each house of the legislature and must include language authorizing the creation of a state debt under Article VIII, section 8, of the Montana constitution.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 5, part 16, and the provisions of Title 17, chapter 5, part 16, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 400

[SB 289]

AN ACT PROVIDING THAT A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS MAY NOT IMPOSE A LICENSE FEE OR

LICENSE TAX ON A REAL ESTATE BROKER OR SALESPERSON; AND
AMENDING SECTION 37-51-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-312, MCA, is amended to read:

“37-51-312. No taxation by municipality. ~~No~~ (1) A license fee or license tax may *not* be imposed on a real estate broker or salesperson as a condition to the practice of the broker's or salesperson's profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) *This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality's or other political subdivision's jurisdiction.*”

Approved April 25, 2005

CHAPTER NO. 401

[SB 294]

AN ACT EXTENDING THE TIME FOR PROTESTS INVOLVING SPECIAL
IMPROVEMENT DISTRICT PROJECTS IF THE NORMAL PROTEST
PERIOD INCLUDES A HOLIDAY OTHER THAN A SUNDAY; AMENDING
SECTIONS 7-12-2109, 7-12-4110, AND 7-12-4114, MCA; AND PROVIDING
AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district. (1) (a) ~~At~~ *Except as provided in subsection (1)(b), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention,* any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(b) *If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.*

(2) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 2. Section 7-12-4110, MCA, is amended to read:

“7-12-4110. Protest against proposed work or district. (1) (a) ~~At~~ *Except as provided in subsection (1)(b), at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any*

owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) *If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.*

(2) A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the ~~15-day~~ protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 3. Section 7-12-4114, MCA, is amended to read:

"7-12-4114. Resolution creating special improvement district. (1) ~~When~~ *The council may order proposed improvements after:*

(a) no protests have been delivered to the clerk of the city council within ~~15 days~~ *the time prescribed in 7-12-4110* after the date of the first publication of the notice of the passing of the resolution of intention;;

(b) ~~when~~ *a protest shall have* has been found by ~~said council~~ to be insufficient or ~~shall have~~ *has* been overruled; or

(c) ~~when~~ *a protest against the extent of the proposed district shall have* has been heard and denied; ~~immediately thereupon, the council shall be deemed to have acquired jurisdiction to order the proposed improvements.~~

(2) Before ordering any of ~~said the~~ proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~theretofore~~ introduced and passed by the council."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 402

[SB 314]

AN ACT REVISING COMMISSIONER QUALIFICATIONS FOR IRRIGATION DISTRICTS; DEFINING THE TERM "ENTITY"; AMENDING SECTION 85-7-1501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1501, MCA, is amended to read:

"85-7-1501. Qualifications of commissioners and term of office. (1) ~~A person may not be a commissioner unless he is an owner of irrigable land within the division of the district he is to represent and is a resident of the county in which the division of the district or some portion of the division is situated. To qualify as a commissioner, an individual:~~

(a) *shall own irrigable land within the division of the district that the individual would represent or hold an equity ownership in an entity that owns irrigable land within the division of the district that the individual would represent; and*

(b) *must be a resident of the county, or an adjoining county, in which some portion of the division of the district that the individual would represent is located.*

(2) The commissioners appointed shall hold their respective offices until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner must be approved by the district court or judge of the district court and filed in the office of the clerk of the court.

(3) *For the purposes of this section, the term "entity" means a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an unincorporated association, or a foundation."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 403

[SB 320]

AN ACT PROVIDING FOR THE REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS UNDER GENERAL PERMIT AUTHORIZATIONS; DEFINING THE TERMS "ANIMAL FEEDING OPERATION", "CONCENTRATED ANIMAL FEEDING OPERATION", "LARGE CONCENTRATED ANIMAL FEEDING OPERATION", AND "MEDIUM CONCENTRATED ANIMAL FEEDING OPERATION"; PROVIDING FEES FOR PERMITTING CONCENTRATED ANIMAL FEEDING OPERATIONS; PROVIDING FOR THE LEVEL OF ENVIRONMENTAL REVIEW OF CONCENTRATED ANIMAL FEEDING OPERATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 3], the following definitions apply:

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

(a) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(b) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation or that is designated as a concentrated animal feeding operation in accordance with 40 CFR, part 122. Two or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of

determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at a minimum:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves;
- (d) 2,500 swine each weighing 55 pounds or more;
- (e) 10,000 swine each weighing less than 55 pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
- (j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
- (k) 82,000 laying hens if the animal feeding operation uses other than a liquid manure-handling system;
- (l) 30,000 ducks if the animal feeding operation uses other than a liquid manure-handling system; or
- (m) 5,000 ducks if the animal feeding operation uses a liquid manure-handling system.

(4) "Medium concentrated animal feeding operation" means an animal feeding operation with the type and number of animals that fall within any of the ranges listed in subsection (4)(a) and that has been defined or designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if:

(a) the type and number of animals that it stables or confines falls within any of the following ranges:

- (i) 200-699 mature dairy cows, whether milked or dry;
- (ii) 300-999 veal calves;
- (iii) 300-999 cattle other than mature dairy cows or veal calves;
- (iv) 750-2,499 swine each weighing 55 pounds or more;
- (v) 3,000-9,999 swine each weighing less than 55 pounds;
- (vi) 150-499 horses;
- (vii) 3,000-9,999 sheep or lambs;
- (viii) 16,500-54,999 turkeys;
- (ix) 9,000-29,999 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
- (x) 37,500-124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
- (xi) 25,000-81,999 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(xii) 10,000-29,999 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(xiii) 1,500-4,999 ducks if the animal feeding operation uses a liquid manure-handling system; and

(b) either of the following conditions is met:

(i) pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Section 2. Permitting — concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the board shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit.

Section 3. Fees for concentrated animal feeding operation permits — environmental review. (1) (a) The fees for a general permit authorization or an individual permit are \$600 for the initial application and \$600 for each renewal.

(b) In addition to the fees provided for in subsection (1)(a), there is an annual fee for a general permit authorization or an individual permit. The fee is \$600 and is subject to the annual fee reduction provisions in 75-5-516(2)(b).

(2) The department is required to conduct only the type of environmental assessment that would be conducted for a routine action with limited environmental impact pursuant to Title 75, chapter 1, part 2, as the necessary level of environmental review for concentrated animal feeding operations that qualify for a general permit pursuant to [section 2]. For concentrated animal feeding operations that require an individual permit, the level of environmental review must be an environmental assessment unless the department determines that an environmental impact statement is required pursuant to 75-1-201. A programmatic environmental impact statement is not required for permitting conducted under [section 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to concentrated animal feeding operations that are permitted or reviewed on or after January 1, 2005.

Approved April 25, 2005

CHAPTER NO. 404

[SB 328]

AN ACT PROVIDING FOR A TASK FORCE IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO STUDY THE PREVALENCE AND CARE OF AND TO RAISE AWARENESS ON THE CAUSES AND NATURE OF CERVICAL CANCER; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Task force on cervical cancer. (1) There is a task force on cervical cancer established in the department of public health and human services.

(2) The task force must be composed of at least 6 and no more than 10 members and must include:

- (a) an obstetrician-gynecologist;
- (b) a registered nurse;
- (c) a physician in family practice;
- (d) a member from the cancer research community;
- (e) the state epidemiologist; and
- (f) a cervical cancer survivor.

(3) The task force members must be appointed by the director to 2-year terms. The task force shall meet quarterly as needed. The task force members must be reimbursed for expenses as provided in 2-18-501 through 2-18-503. Additional members may be added to the task force upon a majority vote of the members.

(4) The task force shall:

- (a) review statistical and qualitative data on the prevalence and burden of cervical cancer in Montana;
- (b) raise public awareness on the causes and nature of cervical cancer;
- (c) identify strategies and new technologies that are effective in preventing and controlling the risk of cervical cancer;
- (d) identify and examine the limitations of existing laws, regulations, programs, and services with regard to coverage and awareness issues for cervical cancer;
- (e) include information and strategies relating to cervical cancer in a state comprehensive cancer control program;
- (f) facilitate coordination of and communication between state and local agencies and organizations;
- (g) receive and consider reports and testimony from individuals, including cervical cancer survivors, from leaders in the issue of cervical cancer, local health departments, community-based organizations, and voluntary health organizations, and from other public and private organizations statewide to learn more about contributions to prognosis, prevention, treatment, and improvement of cervical cancer prevention, diagnosis, and treatment in Montana.

(5) The task force shall issue a report to the children, families, health, and human services interim committee by August 1, 2006:

- (a) identifying the full impact of cervical cancer in Montana;
- (b) recommending strategies or actions to the department to reduce the occurrence of and burden and costs caused by cervical cancer; and
- (c) identifying how to increase public awareness of cervical cancer and the options for prevention.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Termination. [This act] terminates June 30, 2007.

Approved April 25, 2005

CHAPTER NO. 405

[SB 333]

AN ACT CLARIFYING A SCHOOL DISTRICT'S USE OF ITS RETIREMENT FUND TO PAY FOR BENEFITS FOR SCHOOL DISTRICT OR COOPERATIVE EMPLOYEES; REQUIRING A SCHOOL DISTRICT TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A DISTRICT EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE DISTRICT'S IMPACT AID FUND; REQUIRING A COOPERATIVE TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A COOPERATIVE EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE MISCELLANEOUS PROGRAMS FUND WITH MONEY RECEIVED FROM THE MEDICAID PROGRAM; AMENDING SECTION 20-9-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, *or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101; and*

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; *and*

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to retirement benefits paid in the school fiscal year beginning on or after July 1, 2004.

Approved April 25, 2005

CHAPTER NO. 406

[SB 358]

AN ACT TO ALLOW IMPLEMENTATION OF LONG-TERM CARE PARTNERSHIPS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS ALLOWED BY FEDERAL LAW OR WAIVER; AMENDING SECTION 53-6-803, MCA; AND REPEALING SECTION 8, CHAPTER 195, LAWS OF 1997.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-803, MCA, is amended to read:

~~“53-6-803. (Effective six months after occurrence of contingency)~~
Long-term care insurance partnerships authorized. (1) The commissioner and the department may in their discretion ~~create~~ *establish* long-term care insurance partnerships if federal law permits those partnerships. ~~If created, the partnerships must be consistent with the requirements as provided for in federal law under 42 U.S.C. 1396p or if allowed by a waiver of federal law under section 1115 of Title XIX XI of the Social Security Act, 42 U.S.C. 1396, et seq. 1315.~~

(2) The ~~commissioner and the~~ department may in ~~their~~ *its* discretion collaborate with private insurers to ~~create~~ *implement* long-term care insurance partnerships that will allow individuals who have resources in excess of the resource limit for receipt of medical assistance under the Montana medicaid program to receive medical assistance benefits if those individuals are eligible for or require the level of care provided by a long-term care facility and meet the other program requirements ~~to qualify for those benefits in accordance with federal law or an approved waiver in order to facilitate the enrollment of persons into long-term care insurance plans.~~

(3) Under partnerships created pursuant to this section, individuals may qualify for special treatment of their resources if they purchase a long-term care insurance policy or certificate certified by the commissioner and the department as provided in 53-6-804 prior to becoming eligible for medical assistance benefits. *The department may modify eligibility and other medicaid requirements by administrative rule as provided in 53-6-805 and as allowed by state and federal law to encourage individuals to maintain long-term care insurance.*

(4) The long-term care insurance partnerships may in the department's discretion be based on a dollar-for-dollar model or any other model that is cost-neutral.”

Section 2. Repealer. Section 8, Chapter 195, Laws of 1997, is repealed.

Approved April 25, 2005

CHAPTER NO. 407

[SB 388]

AN ACT PROVIDING THAT INSURANCE COMPANIES THAT HAVE DIRECT REPAIR PROGRAMS WITH AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MAY NOT LIMIT THE NUMBER OF AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS WITH WHOM THEY HAVE DIRECT REPAIR PROGRAMS AS LONG AS THE

AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MEET CERTAIN CRITERIA; PROVIDING THAT A VIOLATION IS SUBJECT TO CEASE AND DESIST ORDERS OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-18-224 AND 33-18-1006, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-224, MCA, is amended to read:

“33-18-224. Designation of specific automobile ~~body~~ body repair shops businesses prohibited. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular automobile *body* repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or that provides an incentive or inducement for an insured person to use a particular automobile *body* repair business or location.

(2) (a) *Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.*

(b) *An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.*

(c) *Upon request, the insurance company shall provide, without prejudice or bias, the insured person with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the insured person and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:*

(i) *possesses the equipment necessary to undertake repairs;*

(ii) *undertakes training of management and technical personnel with respect to repair information and the claims process;*

(iii) *agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;*

(iv) *agrees to warrant the quality of work, including refinishing, in writing to the insured person, for a period of not less than 1 year from the date of repair;*

(v) *agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and*

(vi) *if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the*

necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the insured person.

(d) If the insured person requests the list provided for in subsection (2)(c), the insurance company shall inform the insured person that the insured person may use an automobile body repair business or location at the sole discretion of the insured person.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

~~(2) For the purposes of this section, an incentive or inducement does not include:~~

~~(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;~~

~~(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location.~~

~~(3)(4)~~ The insured may use ~~a~~ *an automobile body repair* business or location at the insured's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile ~~body-body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body-body~~ repair services than the lowest prevailing market price, as defined in 33-18-222.

~~(4) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.~~

(5) If the insured person uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the insured person.

~~(5)(6)~~ It is unlawful for an automobile *body* repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile *body* repair service.

~~(6)(7)~~ An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

~~(7)(8)~~ For purposes of this section, "automobile *body* repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 2. Section 33-18-1006, MCA, is amended to read:

“33-18-1006. Desist orders for prohibited practices. Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.”

Approved April 25, 2005

CHAPTER NO. 408

[SB 406]

AN ACT INCREASING THE SURCHARGE FOR FILING A PETITION FOR DISSOLUTION OF MARRIAGE BY \$10 AND ALLOCATING THE INCREASE TO FUND CIVIL LEGAL ASSISTANCE FOR INDIGENT VICTIMS OF DOMESTIC VIOLENCE; AND AMENDING SECTIONS 3-2-714 AND 25-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-714, MCA, is amended to read:

“3-2-714. Civil legal assistance for indigent victims of domestic violence account. (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201(3)(a) and ~~(6)~~ (5). The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds.”

Section 2. Section 25-1-201, MCA, is amended to read:

“25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~\$160~~ \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk’s office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

- (f) for oath and jurat, with seal, \$1;
 - (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;
 - (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);
 - (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
 - (j) for transmission of records or files or transfer of a case to another court, \$5;
 - (k) for filing and entering papers received by transfer from other courts, \$10;
 - (l) for issuing a marriage license, \$30;
 - (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
 - (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;
 - (o) for filing a declaration of marriage without solemnization, \$30;
 - (p) for filing a motion for substitution of a judge, \$100;
 - (q) for filing a petition for adoption, \$75.
- (2) Except as provided in subsections (3), and (5), ~~through (7) and (6)~~, fees collected by the clerk of district court must:
- ~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~
 - ~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~
- (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, ~~\$9~~ \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.
- (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.
- (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).
- ~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(7)(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations.

(8)(7) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.”

Approved April 25, 2005

CHAPTER NO. 409

[SB 434]

AN ACT REVISING THE FORM FILING AND APPROVAL PROVISIONS OF THE INSURANCE CODE; PROVIDING REQUIREMENTS FOR CERTIFICATION AND DELIVERY; ALLOWING A FORM THAT IS NOT DISAPPROVED BY THE COMMISSIONER OF INSURANCE WITHIN 60 DAYS TO BE CONSIDERED APPROVED; PROVIDING REQUIREMENTS FOR INSURERS REGARDING NOTIFICATION OF FORM USE; PROVIDING REQUIREMENTS FOR THE COMMISSIONER REGARDING DISAPPROVALS OR WITHDRAWALS OF APPROVAL; PROVIDING THAT THE FORM FILING AND APPROVAL PROCESS FOR HEALTH MAINTENANCE ORGANIZATIONS AND FORMS ARE SUBJECT TO THE SAME REQUIREMENTS AS FOR INSURERS GENERALLY; AMENDING SECTIONS 33-1-501 AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-501, MCA, is amended to read:

“33-1-501. Filing and approval of forms — approval — review of disapproval or withdrawal of approval — application. (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, ~~viatical disclosure form~~, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form and, for the purposes of disability insurance, an outline of coverage as required by 33-22-244 and 33-22-521 have been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) A filing required by subsection (1)(a) must be submitted by an officer of the insurer with a certification in a form prescribed by the commissioner. The certification must state that to the best of the officer's knowledge and belief, the policy, contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate complies with the applicable provisions of Title 33.

~~(b)~~(c) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) (a) ~~The filing must be made not less than 60 days in advance of before delivery and must be delivered by hand or sent by certified mail with a return receipt requested. The commissioner's office shall mark a filing with the date of receipt by the commissioner's office.~~

(b) (i) *If after 60 days from the date of receipt by the commissioner's office the commissioner has not approved or disapproved the form by a notice pursuant to the provisions in subsection (4), the form is considered approved for all purposes, subject to subsection (2)(c).*

(ii) *The running of the 60-day period is tolled for a period commencing on the date that the commissioner notifies the insurer of problems or questions and requests additional information from the insurer concerning a form filed pursuant to subsection (1)(a) and ending on the date that the insurer submits its response to the commissioner.*

(iii) *For purposes of tolling the 60-day period as provided in subsection (2)(b)(ii), the commissioner's request notification may be made electronically.*

(c) *In a letter separate from the original filing and delivered by hand or sent by certified mail with return receipt requested, the insurer shall notify the commissioner, at least 10 days before the use of the form in the market, that the insurer believes that:*

(i) the form has been or will be considered approved; and

(ii) the insurer will begin marketing the form in Montana.

(d) *The commissioner's office shall mark a letter received pursuant to subsection (2)(c) with the date of receipt by the commissioner's office.*

(3) *Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period.*

(4) *The commissioner may at any time, after notice and for cause shown, withdraw any approval.*

~~(3)~~ Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer *of the specific reason or reasons for and the legal authority supporting the disapproval or withdrawal of approval in whole or in part. The disapproval or withdrawal of approval does not take effect unless*

it is issued after the commissioner has reviewed the form and provided notice to the person who filed the form pursuant to 33-1-314 and this subsection.

(5) After the date of the insurer's receipt of notice of disapproval or withdrawal of approval by the commissioner, the insurer may not deliver the form or issue the form for delivery in Montana.

(6) The insurer may request a hearing, as provided for in 33-1-701, for unresolved disputes regarding a disapproval or a withdrawal of approval.

~~(4)~~(7) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

~~(5)~~(8) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

~~(6)~~(9) ~~This section and~~ Section 33-1-502 and this section do not apply to:

- (a) reinsurance;
- (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection ~~(5)~~ (8);
- (c) ocean marine and foreign trade insurances.

~~(7)~~(10) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law."

Section 2. Section 33-31-301, MCA, is amended to read:

"33-31-301. (Temporary) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner *in accordance with 33-1-501*.

(3) An evidence of coverage issued or delivered to a person residing in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

- (a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) except as provided in 33-22-262, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) except as provided in 33-22-262, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner *in accordance with 33-1-501* and issued to the enrollee.

(5) (a) Except as provided in 33-22-262, a health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) Except as provided in 33-22-262, a health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

~~(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer. The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.~~

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-301. (Effective July 1, 2009) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner *in accordance with 33-1-501*.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the

benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

- (i) emergency and urgent care;
 - (ii) restrictions on the selection of primary or referral providers;
 - (iii) restrictions on changing providers during the contract period;
 - (iv) out-of-pocket costs, including copayments and deductibles;
 - (v) charges for missed appointments or other administrative sanctions;
 - (vi) restrictions on access to care if copayments or other charges are not paid;
- and
- (vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the

insured resides on that date is amended to conform to the minimum requirements of those statutes.”

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner *in accordance with 33-1-501* and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) ~~The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer. The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.~~

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.”

Section 3. Effective date. [This act] is effective January 1, 2006.

Section 4. Applicability. [This act] applies to all policies, forms, and certificates filed with the commissioner of insurance on or after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 410

[SB 435]

AN ACT PROVIDING FOR PROBATE OF A NONDOMICILIARY DECEDENT'S WILL THAT IS FILED AND NOT PROBATED IN A COURT IN THE DOMICILIARY STATE; AMENDING SECTIONS 72-3-203, 72-3-212, AND 72-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Nondomiciliary decedent — will filed and not probated in domiciliary state. A will of a nondomiciliary decedent that has been filed and not probated in a court in the domiciliary state may be proved for probate in this state by an authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been filed and not submitted for probate in the court in the domiciliary state.

Section 2. Section 72-3-203, MCA, is amended to read:

“72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will ~~shall~~ *must* state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, ~~or that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], accompanies the application;~~

(b) that the applicant to the best of ~~his~~ *the applicant's* knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument ~~which~~ *that* is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate, as provided in this chapter, has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.

(2) An application for informal appointment of a personal representative to administer an estate under a will ~~shall~~ *must* describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment ~~shall~~ *must* adopt the statements in the application or petition for probate and state the name,

address, and priority for appointment of the person whose appointment is sought.”

Section 3. Section 72-3-212, MCA, is amended to read:

“72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

- (1) the application is complete;
- (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant’s knowledge and belief;
- (3) the applicant appears from the application to be an interested person as defined in 72-1-103;
- (4) on the basis of the statements in the application, venue is proper;
- (5) an original, duly executed, and apparently unrevoked will, *authenticated copy of a will probated in another jurisdiction, or an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1]*, is in the clerk’s possession;
- (6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and
- (7) it appears from the application that the time limit for original probate has not expired.”

Section 4. Section 72-3-301, MCA, is amended to read:

“72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

- (a) requests an order as to the testacy of the decedent in relation to a particular instrument ~~which~~ *that* may or may not have been informally probated and determining the heirs;
 - (b) contains the statements required for informal applications as stated in ~~the five subsections under 72-3-202; and the statements required by subsections (b) and (c) of 72-3-203(1)(b) and (1)(c); and~~
 - (c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is ~~neither~~ *not* in the possession of the court ~~nor accompanies or does not accompany~~ the petition, ~~and if no~~ *an* authenticated copy of a will probated in another jurisdiction ~~accompanies does not accompany~~ the petition, *or if an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], does not accompany the petition,* the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.
- (2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs

without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.”

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 2, and the provisions of Title 72, chapter 3, part 2, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2005.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the probate of testate nondomiciliary decedents' estates that have not been closed before [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 411

[SB 452]

AN ACT AUTHORIZING A JUDGE TO ISSUE A STANDING NO CONTACT ORDER AND TO DIRECT LAW ENFORCEMENT TO SERVE THE ORDER ON DEFENDANTS CHARGED WITH PARTNER OR FAMILY MEMBER ASSAULT; PROVIDING FOR ORAL AND WRITTEN NOTIFICATION OF THE ORDER TO THE DEFENDANT; PROVIDING THAT VIOLATION OF A NO CONTACT ORDER IS A MISDEMEANOR; AND AMENDING SECTIONS 46-6-311 AND 46-9-108, MCA.

WHEREAS, the Legislature has reviewed and considered the report filed by the Montana Domestic Violence Fatality Review Commission, which conducted case reviews of domestic violence homicides of spouses, partners, and children; and

WHEREAS, victims of domestic violence are at high risk for additional threats, violence, and homicide; and

WHEREAS, a victim's participation in a prosecution is jeopardized when a domestic violence assault is followed by intimidation in the form of threats and coercion; and

WHEREAS, courts have the authority to impose conditions on defendants charged with partner or family member assault when conditions will improve victim safety; and

WHEREAS, a court order restricting contact between the offender and the victim will improve victim safety.

Be it enacted by the Legislature of the State of Montana:

Section 1. Partner or family member assault — no contact order — notice — violation of order — penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on all defendants charged with a violation of 45-5-206. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as

defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with an assault on a partner or family member. You are not allowed to have contact with _____. (list names). You may not _____. Violation of this no contact order is a criminal offense under [this section], MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of this offense.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order.

Section 2. Section 46-6-311, MCA, is amended to read:

“46-6-311. Basis for arrest without warrant — arrest of predominant aggressor — no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) *If a judge has issued a standing order as provided in [section 1], a peace officer shall give a defendant charged with partner or family member assault both written and verbal notice of the no contact order issued pursuant to [section 1]. The notice must include specific conditions as ordered by the court.”*

Section 3. Section 46-9-108, MCA, is amended to read:

“46-9-108. Conditions upon defendant's release — notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, *including in a case of partner or family member assault the restrictions contained in a no contact order issued under [section 1]*; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

Approved April 25, 2005

CHAPTER NO. 412

[SB 458]

AN ACT PROVIDING THAT THE PERIOD FOR THE COMMENCEMENT OF AN ACTION AGAINST A MUNICIPALITY ARISING FROM A DECISION OF THE MUNICIPALITY RELATING TO A LAND USE CONSTRUCTION OR DEVELOPMENT PROJECT IS 6 MONTHS FROM THE DATE OF THE WRITTEN DECISION; AND AMENDING SECTION 27-2-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-209, MCA, is amended to read:

"27-2-209. Actions against local government or local government official. (1) The period prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in ~~his~~ *that person's* official capacity and in virtue of ~~his~~ *that person's* office or by the

omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years; ~~but, except that~~ this subsection does not apply ~~for~~ to an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county ~~which~~ *that* have been rejected by the county commissioners must be commenced within 6 months after the first rejection ~~thereof by such board~~.

(4) The period prescribed for the commencement of an action against a ~~municipal corporation~~ *municipality* for damages or injuries to property caused by a mob or riot is within 1 year.

(5) *The period prescribed for the commencement of an action against a municipality arising from a decision of the municipality relating to a land use, construction, or development project is 6 months from the date of the written decision.*

Approved April 25, 2005

CHAPTER NO. 413

[SB 466]

AN ACT PROVIDING FOR THE FORCED RECONVEYANCE OF TRUST INDENTURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING DEFINITIONS; PROVIDING NOTICE AND RECONVEYANCE FORMS; PROVIDING FOR THE RECOVERY OF COSTS BY TITLE INSURERS AND TITLE INSURANCE PRODUCERS WHEN BENEFICIARIES OR SERVICERS FAIL TO RECONVEY UPON THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE; AMENDING SECTIONS 71-1-303 AND 71-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-303, MCA, is amended to read:

“71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Beneficiary” means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or the person’s successor in interest, who may not be the trustee.

(2) “Grantor” means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) “Servicer” means a person who collects loan payments on behalf of a beneficiary.

(4) (a) “Title insurance producer” means a person who holds a valid title insurance producer’s license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) *issue policies of the title insurer.*

(b) *Title insurance producer does not include an approved attorney.*

(5) *"Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer authorized to transact title insurance in this state.*

~~(3)~~(6) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

~~(4)~~(7) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or the person's successor in interest."

Section 2. Reconveyance of trust indenture — forms — objections to reconveyance. (1) A title insurer or title insurance producer may reconvey a trust indenture in accordance with the provisions of this section if:

(a) the obligation secured by the trust indenture has been fully paid by the title insurer or title insurance producer; or

(b) the obligation secured by the trust indenture was fully paid by a former title insurer, title insurance producer, or predecessor of the title insurer or title insurance producer.

(2) A title insurer or title insurance producer may reconvey a trust indenture regardless of whether the title insurer or title insurance producer is named as a trustee under a trust indenture.

(3) At the time that the obligation secured by the trust indenture is paid in full, or at any time after payment, the title insurer or title insurance producer shall deliver by certified mail a notice of intent to reconvey and a copy of the reconveyance to be recorded to the beneficiary or servicer at:

(a) the address specified in the trust indenture;

(b) any address for the beneficiary or servicer specified in the last-recorded assignment of the trust indenture;

(c) any address for the beneficiary or servicer specified in a request for notice recorded under 71-1-314; or

(d) the address shown on any payoff statement received by the title insurer or title insurance producer from the beneficiary or servicer.

(4) (a) The notice of intent to reconvey must contain the name of the beneficiary and the servicer if loan payments on the trust indenture are collected by a servicer, the name of the title insurer or title insurance producer, and the date that the notice is signed.

(b) The notice must be substantially in the following form:

"NOTICE OF INTENT TO RECONVEY

NOTICE IS HEREBY GIVEN TO YOU AS FOLLOWS:

1. THIS NOTICE CONCERNS THE (TRUST INDENTURE) DESCRIBED AS FOLLOWS:

(GRANTOR):

(BENEFICIARY):.....

RECORDING INFORMATION:

DOCUMENT NUMBER:

BOOK NUMBER:

PAGE NUMBER:

2. THE UNDERSIGNED CLAIMS TO HAVE PAID IN FULL OR POSSESSES SATISFACTORY EVIDENCE OF THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE DESCRIBED ABOVE.

3. THE UNDERSIGNED WILL FULLY RECONVEY THE TRUST INDENTURE DESCRIBED IN THIS NOTICE WITHIN 90 DAYS FROM THE DATE STATED ON THIS NOTICE UNLESS:

(A) A RECONVEYANCE OF THE TRUST INDENTURE HAS BEEN RECORDED; OR

(B) THE UNDERSIGNED HAS RECEIVED BY CERTIFIED MAIL A NOTICE STATING THAT THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS NOT BEEN PAID IN FULL OR THAT YOU OTHERWISE OBJECT TO THE RECONVEYANCE OF THE TRUST DEED. NOTICE MUST BE MAILED TO THE ADDRESS STATED ON THIS FORM.

(C) PURSUANT TO 71-1-307, MCA, A BENEFICIARY OR SERVICER MAY BE LIABLE FOR DAMAGES, COSTS, AND PENALTIES FOR FAILING TO RECONVEY A TRUST INDENTURE WITHIN 90 DAYS OF THE DATE STATED IN THIS NOTICE IF THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS BEEN FULLY PAID PRIOR TO THE DELIVERY OF THIS NOTICE.

4. A COPY OF THE RECONVEYANCE OF TRUST INDENTURE IS ENCLOSED WITH THIS NOTICE.

.....
(SIGNATURE OF TITLE INSURER OR TITLE INSURANCE PRODUCER)

.....
(ADDRESS OF TITLE INSURER OR TITLE INSURANCE PRODUCER)"

(5) (a) If, within 90 days from the day on which the title insurer or title insurance producer delivers the notice of intent to reconvey, the beneficiary or servicer does not send by certified mail to the title insurer or title insurance producer a notice that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture, the title insurer or title insurance producer may execute, acknowledge, and record a reconveyance of a trust indenture.

(b) A reconveyance of a trust indenture must be in substantially the following form:

"RECONVEYANCE OF TRUST INDENTURE

(Name of title insurer or title insurance producer) authorized to conduct business in this state reconveys, without warranty, the following trust property located in (name of county), state of Montana, that is covered by a trust indenture naming (name of grantor) as grantor, and (name of beneficiary) as beneficiary that was recorded on (date) in book at page as document number: (insert a description of the trust property.)

The undersigned title insurer or title insurance producer certifies as follows:

1. The undersigned title insurer or title insurance producer has fully paid the obligation secured by the trust indenture or possesses satisfactory evidence of the full payment of the obligation secured by the trust indenture.

2. As required by [section 2], the title insurer or title insurance producer delivered to the beneficiary or servicer a notice of intent to reconvey and a copy of the reconveyance.

3. The trust indenture has not been reconveyed and the title insurer or title insurance producer did not receive, within 90 days from the day on which the title insurer or title insurance producer delivered the notice of intent to reconvey to the beneficiary or servicer, a notice from the beneficiary or servicer, sent by certified mail, that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture.

.....
(Notarization)

.....
(Signature of title insurer or title insurance producer)"

(c) (i) A reconveyance of trust indenture executed and notarized in accordance with subsection (5)(b) may be recorded.

(ii) Except as provided in subsection (5)(c)(iii), a reconveyance of a trust indenture that is recorded in compliance with subsection (5)(c)(i) is valid regardless of any deficiency in the reconveyance procedure not disclosed in the reconveyance of trust indenture.

(iii) If the title insurer's or title insurance producer's signature on a reconveyance of trust recorded under subsection (5)(c)(i) is forged, the release of mortgage or reconveyance of trust is void.

(6) A reconveyance of trust indenture pursuant to the provisions of this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust indenture at the time that the trust indenture was reconveyed.

Section 3. Objection to reconveyance. A title insurer or title insurance producer may not record a reconveyance of trust indenture if, within 90 days of the date of the notice of intent to reconvey, the beneficiary or servicer notifies the title insurer or title insurance producer that the obligation has not been paid in full or that the beneficiary or servicer objects to the reconveyance.

Section 4. Liability of title insurer or title insurance producer. A title insurer or title insurance producer who reconveys a trust indenture is liable to the beneficiary for damages suffered by the beneficiary as a result of the reconveyance if:

- (1) the obligation secured by the trust indenture is not fully paid;
- (2) the title insurer or title insurance producer failed to comply with the provisions of [section 2]; or
- (3) the title insurer or title insurance producer acted with gross negligence or in bad faith in reconveying the trust indenture.

Section 5. Section 71-1-307, MCA, is amended to read:

"71-1-307. Reconveyance upon performance — liability for failure to reconvey. (1) Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary *or servicer*, shall reconvey the interest in real property described in the trust indenture to the grantor. ~~In the event~~ *If* the obligation is performed and the beneficiary *or*

servicer refuses to request reconveyance or the trustee refuses to reconvey the property within 90 days of the request, the beneficiary, servicer, or trustee so refusing shall be who refuses is liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property to the grantor for the sum of \$500 and all actual damages resulting from the refusal to reconvey.

(2) If a beneficiary or servicer has received a notice of intent to reconvey pursuant to [section 2] and has not timely requested a reconveyance or has not objected to the reconveyance within the 90-day period established in [section 2], the beneficiary or servicer is liable to the title insurer or title insurance producer for the sum of \$500 and all damages resulting from the failure.

(3) In an action by a grantor, title insurer, or title insurance producer to collect any sums due under this section, the court shall award attorney fees and costs to the prevailing party."

Section 6. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 71, chapter 1, part 3, and the provisions of Title 71, chapter 1, part 3, apply to [sections 2 through 4].

Section 7. Applicability. [Section 5] applies to all trust indentures executed on or after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 414

[SB 472]

AN ACT ALLOWING COUNTY COMMISSIONERS TO DESIGNATE PUBLIC PROJECTS FOR PURPOSES OF COUNTY JAIL WORK PROGRAMS; ALLOWING 2 DAYS' CREDIT AGAINST INCARCERATION FOR EACH DAY'S PARTICIPATION IN A COUNTY JAIL WORK PROGRAM; AMENDING SECTION 7-32-2226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2226, MCA, is amended to read:

"7-32-2226. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on ~~county public projects or for county departments~~ as designated by the board of county commissioners. *Upon a request of a federal or state agency, city government, or nonprofit corporation and upon mutually agreeable terms or on their own action for county projects, the board of county commissioners may designate projects as public projects for purposes of this section.* A person participating in a county jail work program may not:

- (a) have the person's labor or other work contracted out to a private party;
- (b) be required to do labor or other work that furthers the private interests of a government employee or official;
- (c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

- (d) be used to displace any regular ~~county~~ *government* employee;
- (e) perform the duties of any vacant ~~county~~ *government* position; or
- (f) work on any construction or reconstruction project.

(2) A county may not reduce its current workforce in order to transfer the duties of a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of the person's participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is ~~1 day~~ *2 days* of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. ~~Failure~~ *An unexcused failure* to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

(7) Weed management, as defined in 7-22-2101, whether on public or private land, and other maintenance projects authorized by a board of county commissioners are county projects for purposes of 7-32-2225 through 7-32-2227."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 415

[SB 480]

AN ACT ELIMINATING THE COAL SEVERANCE TAX RATE INCENTIVE FOR IN-STATE ELECTRICAL PRODUCTION; AMENDING SECTION 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-103, MCA, is amended to read:

"15-35-103. (Temporary) Severance tax — rates imposed. (1) ~~(a)~~ A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

~~(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:~~

~~(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.~~

~~(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.~~

(2) "Value" means the contract sales price.

~~(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.~~

~~(4)(3)~~ A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

~~(5)(4)~~ In addition to the exemption described in subsection ~~(4)~~ (3), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. (Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)

15-35-103. (Effective January 1, 2006) Severance tax — rates imposed. (1) ~~(a)~~ A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

~~(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:~~

~~(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.~~

~~(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.~~

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

~~(4)~~(3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 416

[SB 481]

AN ACT MERGING OCCUPATIONAL DISEASES INTO THE WORKERS' COMPENSATION ACT; ESTABLISHING LEGISLATIVE INTENT TOWARD OCCUPATIONAL DISEASES AS PUBLIC POLICY; DEFINING "OCCUPATIONAL DISEASE"; PROVIDING FOR THE LIABILITY OF INSURERS AND COMPENSATION FOR OCCUPATIONAL DISEASES UNDER THE WORKERS' COMPENSATION ACT; PROVIDING FOR TIME FOR CLAIMS TO BE PRESENTED; AMENDING SECTIONS 2-15-2015, 30-9A-109, 37-1-131, 39-71-105, 39-71-106, 39-71-107, 39-71-116, 39-71-201, 39-71-206, 39-71-211, 39-71-315, 39-71-316, 39-71-317, 39-71-403, 39-71-407, 39-71-416, 39-71-525, 39-71-601, 39-71-603, 39-71-612, 39-71-743, 39-71-915, 39-71-1105, 39-71-2401, 39-71-2406, 39-71-2408, 39-71-2411, 39-73-104, 39-73-107, 45-6-301, 71-3-1118, AND 85-5-101, MCA; REPEALING SECTIONS 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709, 39-72-711, 39-72-712, AND 39-72-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Applicability of workers' compensation act — exceptions.

Except as provided in 39-71-407, 39-71-601, and 39-71-603, this chapter applies to injuries and occupational diseases.

Section 2. Compensation for occupational diseases and medical benefits — diminution of compensation. (1) Compensation for occupational diseases must be equal to the compensation and medical benefits provided for injuries in this chapter.

(2) When the same medical condition may be claimed as an injury and an occupational disease, compensation payable to the claimant, the claimant's beneficiaries, or the claimant's dependents may not be duplicated for the same conditions over the same time period.

Section 3. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease, if an autopsy is necessary to determine the cause of death, an autopsy may be requested by an insurer. The autopsy must be made under the supervision of the county coroner or a medical examiner. The expense of the autopsy must be paid by the insurer.

Section 4. Benefits for pneumoconiosis. (1) Pneumoconiosis is an occupational disease that is compensable under this part. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but

not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

(2) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of employment.

Section 5. Prohibiting supplementing of benefits. A person receiving compensation or benefits under chapter 73 of this title is not entitled to compensation or benefits under this chapter.

Section 6. Section 2-15-2015, MCA, is amended to read:

"2-15-2015. Workers' compensation fraud investigation and prosecution office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund. The office is under the supervision and control of the attorney general and consists of:

(1) one or more investigators qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, ~~chapters chapter 71 and 72~~, at the request of the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund; and

(2) one or more attorneys licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, ~~chapters chapter 71 and 72~~. The attorneys may also assist county attorneys in prosecuting violations of Title 39, ~~chapters chapter 71 and 72~~, without charge to the county.

(3) The state compensation insurance fund, the department of labor and industry, and the department of justice shall submit to the legislature for approval one proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund and the department of labor and industry on behalf of the uninsured employers' fund for investigating and prosecuting workers' compensation fraud."

Section 7. Section 30-9A-109, MCA, is amended to read:

"30-9A-109. Scope. (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9A-110; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9A-333 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9A-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9A-404 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents under the interest in real property, except to the extent that provision is made for:

(i) liens on real property in 30-9A-203 and 30-9A-308;

(ii) fixtures in 30-9A-334;

(iii) fixture filings in 30-9A-501, 30-9A-502, 30-9A-512, 30-9A-516, and 30-9A-519; and

(iv) security agreements covering personal and real property in 30-9A-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(m) a transfer by a government or governmental subdivision or agency;

(n) an assignment of a deposit account in a consumer transaction, except that 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds; or

(o) an assignment of payments made to or on behalf of claimants pursuant to Title 39, chapter 51, 71, ~~72~~, or 73.”

Section 8. Section 37-1-131, MCA, is amended to read:

“37-1-131. Duties of boards — quorum required. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 ~~or 72~~;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.”

Section 9. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, ~~chapters chapter 71 and 72~~, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer,

and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, ~~chapters~~ *chapter* 71 and 72, must be construed according to ~~their~~ *its* terms and not liberally in favor of any party.

(5) It is the intent of the legislature that:

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(b) *for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace."*

Section 10. Section 39-71-106, MCA, is amended to read:

"39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of ~~chapter 72 or this chapter.~~"

Section 11. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters.

(1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ must be adjusted by a person in Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an

office located in Montana, and adjust Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ at the Montana office of the person adjusting the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the adjuster's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(7) The department may adopt rules to implement this section.

(8) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 12. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

- (b) an unmarried child under 18 years of age;

- (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

- (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

- (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

- (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) (a) *"Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.*

(b) *The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.*

~~(20)~~(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(21)~~(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(23)~~(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

~~(24)~~(25) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical

healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(25)~~(26) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

(26)(27) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(28) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28)(29) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(29)~~(30) “Reasonably safe tools and appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30)(31) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(30)~~ (31), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education, work history, and other factors that affect the worker’s ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31)(32) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(32)~~(33) “Temporary partial disability” means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(33)~~(34) “Temporary service contractor” means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client’s workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(34)~~(35) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35)(36) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36)(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(36)(a)~~ (37)(a) through ~~(36)(e)~~ (37)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(38) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(38)~~(39) "Year", unless otherwise specified, means calendar year."

Section 13. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts Act and the statutory occupational safety acts *that* the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ and the statutory occupational safety acts that the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the

preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%.

Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30, 2001, and on of each succeeding April 30 year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 14. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund — investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters this chapter 71 and 72."

Section 15. Section 39-71-211, MCA, is amended to read:

“39-71-211. Fraud detection and prevention unit — expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under Title 39, ~~chapters~~ *chapter* 71 ~~and 72~~, that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers’ compensation fraud investigation and prosecution office established in 2-15-2015.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.”

Section 16. Section 39-71-315, MCA, is amended to read:

“39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under ~~chapter 72~~ or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under ~~chapter 72~~ or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers’ compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.”

Section 17. Section 39-71-316, MCA, is amended to read:

“39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under ~~chapter 72~~ or this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person’s knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under ~~chapter 72~~ or this chapter is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), “person” includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount

paid by an insurer on the false claim, provided that the amount does not exceed \$50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of ~~chapter 72 or~~ this chapter."

Section 18. Section 39-71-317, MCA, is amended to read:

"39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under ~~chapter 72 or~~ this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The workers' compensation court has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing."

Section 19. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definition. (1) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall ~~make appropriation of and~~ pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any

other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in ~~chapter 72~~ and this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by ~~chapter 72~~ and this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 20. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) ~~Each~~ *For workers' compensation injuries, each* insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer *covered under plan No. 1, plan No. 2, and the state fund under plan No. 3* that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(7) *For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 with an occupational disease that arises out of or is contracted in the course and scope of employment.*

(8) *Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:*

(a) *the occupational disease is established by objective medical findings; and*

(b) *the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.*

(9) *When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.*

(10) *When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:*

(a) *the time that the occupational disease was first diagnosed by a treating physician or medical panel; or*

(b) *the time that the employee knew or should have known that the condition was the result of an occupational disease.*

(11) *In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.*

(12) *As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."*

Section 21. Section 39-71-416, MCA, is amended to read:

"39-71-416. Benefit reduction for third-party recovery. (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to *this chapter 71 or 72* as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1)."

Section 22. Section 39-71-525, MCA, is amended to read:

“39-71-525. Confidentiality of records — exception for use by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under Title 39, ~~chapters~~ *chapter 71 and 72*, or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.”

Section 23. Section 39-71-601, MCA, is amended to read:

“39-71-601. Statute of limitation on presentment of claim — waiver.

(1) ~~In case of personal injury or death~~ *Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death* must be forever barred unless signed by the claimant or the claimant’s representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant’s behalf.

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel.

(3) *When a claimant seeks benefits for an occupational disease, the claimant’s claims for benefits must be presented in writing to the employer, the employer’s insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant’s condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer’s insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent’s death was related to an occupational disease.*

~~(4)~~ Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers’ compensation court.”

Section 24. Section 39-71-603, MCA, is amended to read:

“39-71-603. Notice of injuries other than death to be submitted within thirty days — exception. (1) A claim to recover benefits under the Workers’ Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer’s insurer by the injured employee or someone on the employee’s behalf. Actual knowledge of the accident and injury on the part of the employer or the employer’s managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed

designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury.

(3) *This section does not apply to occupational diseases.*

Section 25. Section 39-71-612, MCA, is amended to read:

“39-71-612. Costs and attorney fees that may be assessed against insurer by workers’ compensation judge — barring of attorney fees under common fund or other doctrines. (1) If an insurer pays or submits a written offer of payment of compensation under *this* chapter ~~71 or 72 of this title~~ but controversy relates to the amount of compensation due, the case is brought before the workers’ compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers’ compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.”

Section 26. Section 39-71-743, MCA, is amended to read:

“39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to ~~chapter 71 or 72 of this title~~ *chapter*.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers’ Compensation Act ~~or Occupational Disease Act of Montana~~, the liability for payment of the claim is the responsibility of the appropriate workers’ compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not

payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.”

Section 27. Section 39-71-915, MCA, is amended to read:

“39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, “paid losses” means the following benefits paid during the preceding calendar year for injuries covered by the ~~Montana Workers’ Compensation Act and the Occupational Disease Act of Montana~~ without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion

of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

Section 28. Section 39-71-1105, MCA, is amended to read:

"39-71-1105. Managed care organizations — application — certification. (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care

to ~~injured~~ workers for injuries *or occupational diseases* that are covered under this chapter ~~or for occupational diseases that are covered under the Occupational Disease Act of Montana~~. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (4)(f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan."

Section 29. Section 39-71-2401, MCA, is amended to read:

"39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter ~~or chapter 72~~, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply

with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter."

Section 30. Section 39-71-2406, MCA, is amended to read:

"39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under ~~chapter 71 or 72 of this title~~ *chapter* if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration."

Section 31. Section 39-71-2408, MCA, is amended to read:

"39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under ~~chapter 71 or 72 of this title~~ *chapter*, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties."

Section 32. Section 39-71-2411, MCA, is amended to read:

"39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under ~~chapter 71 or 72 of this title~~ *chapter* may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 25 days of the mailing of the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the

determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 33. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment ~~shall~~ *must* be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, ~~which that~~ *results in his the person's* total disability so as to render it impossible for ~~him the person~~ *to follow* continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which ~~he the person~~ *would* receive a payment under this chapter, compensation under ~~The Occupational Disease Act of Montana, as provided by chapter 72 of this title [section 4],~~ *which will equal the sum of \$200."*

Section 34. Section 39-73-107, MCA, is amended to read:

"39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis must be granted a payment by the department of \$250 a month, subject to any additional appropriations. If the person is receiving payments under ~~the Occupational Disease Act of Montana, as provided by chapter 72 of this title, [section 4]~~ *that are less in the aggregate than \$200, then the person is entitled to a payment under this chapter of the difference between the amount received under the Occupational Disease Act of Montana, as provided by chapter 72 of this title [section 4], and \$250 a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section."*

Section 35. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
 - (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
 - (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
- (2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:
- (a) has the purpose of depriving the owner of the property;
 - (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
 - (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
- (3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:
- (a) has the purpose of depriving the owner of the property;
 - (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
 - (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
- (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:
- (a) a knowingly false statement, representation, or impersonation; or
 - (b) a fraudulent scheme or device.
- (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 ~~or 72~~, by means of:
- (a) a knowingly false statement, representation, or impersonation; or
 - (b) deception or other fraudulent action.
- (6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or
- (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102.
- (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:
- (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or
 - (b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.
- (8) (a) A person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a

second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 36. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ambulatory surgical facility; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

Section 37. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to

obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees and certificate holders, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71 ~~or 72~~, as a result of the performance of duties as a water commissioner."

Section 38. Repealer. Sections 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709, 39-72-711, 39-72-712, and 39-72-714, MCA, are repealed.

Section 39. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 1].

(2) [Sections 2 through 5] are intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [sections 2 through 5].

Section 40. Coordination instruction. If House Bill No. 126 is passed and approved and if it includes a section that repeals 39-71-416, then [section 21 of this act], amending 39-71-416, is void.

Section 41. Direction to code commissioner. The code commissioner is directed to change any reference to chapter 72 of Title 39 that appears in legislation enacted by the 2005 legislature to a reference to chapter 71 of Title 39.

Section 42. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 43. Effective date — applicability. [This act] is effective July 1, 2005, and applies to occupational diseases that occur on or after July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 417

[SB 487]

AN ACT REVISING LAWS ON SCHOOL BUS SAFETY; INCREASING THE FOOTAGE REQUIREMENT IN WHICH A MOTOR VEHICLE MUST STOP BEFORE REACHING A SCHOOL BUS WHEN BUS LIGHTS ARE FLASHING; PROVIDING THAT A PERSON WHO OBSERVES A VIOLATION MAY PREPARE A VIOLATION REPORT; AMENDING SECTIONS 61-8-351 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-351, MCA, is amended to read:

“61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty. (1) ~~The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or~~ Upon overtaking from either direction ~~any~~ a school bus that has stopped on the highway or street to receive or discharge ~~any~~ school children, a driver of a motor vehicle:

(a) shall stop the motor vehicle not less than ~~10~~ approximately 15 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be

prepared to stop when meeting or overtaking from either direction ~~any~~ a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the ~~vehicle~~ school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

(5) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(6) The driver of a motor vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(7) Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.~~

(7) (a) *A person who observes a violation of this section may prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:*

(i) the time and approximate location at which the violation occurred;

(ii) the license plate number and color of the motor vehicle involved in the violation;

(iii) *identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; and*

(iv) *a description of the person operating the motor vehicle when the violation occurred.*

(b) *A report under subsection (7)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.*

(8)(8) Violation of subsection (1) is punishable upon conviction by a fine of not more than \$500.”

Section 2. Section 61-8-715, MCA, is amended to read:

“61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or convicted of reckless endangerment of a highway worker under 61-8-301(4) shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section ~~61-8-351(7)~~ 61-8-351(8) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 418

[SB 498]

AN ACT INCREASING THE LIMIT TO \$400,000 FOR A LOAN TO A PRIVATE PERSON THAT IS NOT A WATER USERS' ASSOCIATION OR DITCH COMPANY AND \$3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; AMENDING SECTION 85-1-613, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-613, MCA, is amended to read:

“85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of ~~\$200,000~~ \$400,000 or 80% of the fair market value of the security given for the project. In

determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan would exceed the lesser of ~~\$300,000~~ *\$3 million* or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

Section 2. Termination. The amendment to 85-1-613(2) terminates June 30, 2007.

Approved April 25, 2005

CHAPTER NO. 419

[SB 503]

AN ACT ELIMINATING AUTHORIZATION FOR THE TETON-SPRING CREEK BIRD PRESERVE AND ITS SPECIAL ARCHERY SEASON; AND REPEALING SECTION 87-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 87-5-405, MCA, is repealed.

Approved April 25, 2005

CHAPTER NO. 420

[SB 504]

AN ACT SPECIFYING THE USE OF THE ANNUAL ATTORNEY LICENSE TAX; AMENDING SECTION 37-61-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-61-211, MCA, is amended to read:

“37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice ~~his profession~~ within the state is required to pay a license tax of ~~\$25~~ \$25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) (a) *The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:*

- (i) *commission on code of judicial conduct;*
- (ii) *commission on courts of limited jurisdiction;*
- (iii) *commission on practice;*
- (iv) *commission on technology;*
- (v) *district court council;*
- (vi) *judicial nomination commission;*
- (vii) *judicial standards commission;*
- (viii) *sentence review division; and*
- (ix) *uniform district court rules commission.*

(b) *The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.*

~~(4)~~ (4) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 421

[HB 35]

AN ACT PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR THE NUMBER OF HIGHWAY PATROL OFFICER POSITIONS EXISTING ON JUNE 30, 2006; PROVIDING FOR BIENNIAL SALARY INCREASES AFTER THAT DATE; PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR NEW HIGHWAY PATROL OFFICER POSITIONS CREATED AFTER THAT DATE; PROVIDING A FUNDING MECHANISM FOR THE INCREASES BY RAISING CERTAIN VEHICLE REGISTRATION FEES; EXEMPTING THE HIGHWAY PATROL FROM VACANCY SAVINGS; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-303, 17-7-502, AND 61-3-321, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from \$106.6 million in 1973 to \$780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid \$4.50 an hour (\$9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-303, MCA, is amended to read:

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through ~~(9)~~ (10).

~~(c) On the first day of the first complete pay period in fiscal year 2004, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2003.~~

~~(d)~~(c) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection ~~(1)~~(f) (1)(e).

~~(e)~~(d) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f)~~(e) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedule provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal ~~years 2004 and~~ year 2005.

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii)~~(ii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection ~~(3)(a)(iii)~~ (3)(a)(ii) does not provide for a step advancement.

(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for ~~the fiscal years year ending June 30, 2004, and~~ June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's

bargaining unit has ratified a completely integrated collective bargaining agreement.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.

(10) (a) *Montana highway patrol officer base salaries and biennial salary increases must be established through an alternative pay and classification plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff departments in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis*

and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(d) (i) Except as provided in subsection (10)(d)(ii), the survey and plan must be completed at least 6 months before the start of each regular legislative session.

(ii) The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; *[section 4]*; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion

of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 3. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) 2,850 pounds and over, \$10; and

(ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, \$9 in calendar year 2004 and, in each subsequent year, \$19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, \$18.75 in calendar year 2004 and, in each subsequent year, \$22;

(f) logging trucks less than 1 ton, \$23.75;

(g) motor homes, \$22.25;

(h) motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, \$11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, \$3.50 in calendar year 2004 and, in each subsequent year, \$9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$5 in calendar year 2004 and, in each subsequent year, \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(10) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(11) (a) Unless a person exercises the option in subsection (11)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (11)(a). If a written election is made, the fee may not be collected.

(12) For each vehicle subject to a registration fee under subsection (1), an additional fee of \$5 must be collected and forwarded to the department of revenue. The department of revenue shall deposit the \$5 in the account established in [section 4].

Section 4. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to 2-18-303(10):

(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;

(b) the base salary and associated operating costs for new highway patrol officer positions created after June 30, 2006; and

(c) biennial salary increases after June 30, 2006, for highway patrol officers.

Section 5. Montana highway patrol exempt from vacancy savings — report to audit committee. (1) Vacancy savings may not be imposed on authorized positions in the Montana highway patrol.

(2) For purposes of this section:

(a) "authorized positions" means those positions included in the list of current authorized positions that the Montana highway patrol is required to maintain under 2-18-206; and

(b) "vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

(3) Each fiscal year, the department of justice shall provide to the legislative audit committee a detailed report on all positions in the Montana highway patrol. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant;

(c) the total number of hours spent on patrol during the year broken out by enforcement activity and position title.

Section 6. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 44, chapter 1, part 5, and the provisions of Title 44, chapter 1, part 5, apply to [section 4].

(2) [Section 5] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, apply to [section 5].

Section 7. Coordination instruction. If [this act] and House Bill No. 447 are both passed and approved, then 2-18-303 must be amended as follows:

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(6) through (9)~~ (5) through (9).

(c) On the first day of the first complete pay period in fiscal year ~~2004~~ 2006, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2003~~ 2005.

(d) Effective on the first day of the first complete pay period that includes ~~January 1, 2005~~ an employee's anniversary date during the fiscal year ending June 30, 2006, the base salary of each employee must be increased by ~~an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f) 3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater.~~ Effective on the first day of the first complete pay period that includes an employee's anniversary date during the fiscal year ending June 30, 2007, the base salary of each employee must be increased by 4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater. For employees hired on or before September 30, 2005, the anniversary date is October 1.

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.~~

(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in ~~2-18-313 and 2-18-315~~ employees who are members of collective bargaining units that have collectively bargained to participate in a separate or alternative classification and pay plan or who are covered under subsections (5) and (6) of this section.

~~(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:~~

~~(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.~~

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of~~

~~public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.~~

~~(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.~~

~~(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(4)(3) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.~~

~~(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.~~

~~(iii)(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i) (3)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.~~

~~(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.~~

~~(5)(4) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.~~

~~(6)(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.~~

~~(7)(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

~~(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.~~

~~(8)(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(9)~~(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.

(9) (a) *Montana highway patrol officer base salaries and biennial salary increases must be established through an alternative pay and classification plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff departments in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.*

(b) *To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.*

(c) *The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.*

(d) (i) *Except as provided in subsection (9)(d)(ii), the survey and plan must be completed at least 6 months before the start of each regular legislative session.*

(ii) *The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007."*

Section 8. Coordination instruction. If [this act] and House Bill No. 447 are both passed and approved, then [section 6] of House Bill No. 447 must be amended as follows:

"Section 6. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies, from the designated state fund, to implement the adjustments provided for in 2-18-303:

	Fiscal Year 2006			
	General Fund	State Special	Federal Special	Proprietary
Legislative Branch				
	\$209,282	\$18,179	\$0	\$0
Consumer Council				
	0	11,734	0	0
Judicial Branch				
	599,262	23,565	2,033	0
Executive Branch				
	5,613,599	5,553,930	3,644,273	138,263

University System

	3,820,187	0	125,024	0
Total	\$10,242,330	\$5,607,408	\$3,771,330	\$138,263

Fiscal Year 2007

	General Fund	State Special	Federal Special	Proprietary
Legislative Branch				
	\$538,330	\$46,934	\$0	\$0
Consumer Council				
	0	30,024	0	0
Judicial Branch				
	1,547,500	59,996	5,282	0
Executive Branch				
	14,700,424	~~14,466,134~~	9,491,019	361,653
		<i>14,166,823</i>		

University System

	9,007,001	0	293,720	0
Total	\$25,793,255	~~\$14,603,088~~	\$9,790,021	\$361,653
		<i>\$14,303,777</i>		

(2) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

Fiscal Year 2006

	General Fund	State Special	Federal Special	Proprietary
Personal Services Contingency				
	\$1,500,000	\$2,400,000	\$500,000	\$100,000

(3) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

Fiscal Year 2006

	General Fund	Other Funds
Labor-Management Training Initiative		
	\$ 75,000	

Section 9. Coordination instruction. If both Senate Bill No. 285 and [this act] are passed and approved, then subsection (12) of 61-3-321 in [this act] must read as follows:

“(12) For each vehicle subject to a registration fee under subsection (1), except snowmobiles, watercraft, and pole trailers, an additional fee of \$5 must be collected and forwarded to the department of revenue. The department of revenue shall deposit the \$5 in the account established in [section 4].”

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 through 4] are effective January 1, 2006.

Approved April 26, 2005

CHAPTER NO. 422

[SB 308]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INFORM A PARENT OR OTHER PERSON RESPONSIBLE FOR A CHILD'S WELFARE OF THE RIGHT TO HAVE A SUPPORT PERSON PRESENT DURING AN IN-PERSON MEETING WITH A SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. *The After ensuring that the child is safe, the* department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth *of the placement* at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing *and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.*

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(7) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

(8) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 2. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(d) *The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.*

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable

cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
 - (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
 - (c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
 - (d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
 - (e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
 - (f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
 - (g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.
- (4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.
- (5) The petition must be served as provided in 41-3-422."

Approved April 26, 2005

CHAPTER NO. 423

[SB 426]

AN ACT GENERALLY REVISING LAWS PERTAINING TO CONFIDENTIALITY AND INFORMATION SHARING OF YOUTH COURT RECORDS TO PROTECT YOUTH; DEFINING FORMAL AND INFORMAL YOUTH COURT RECORDS; PROVIDING FOR ELECTRONIC TRANSFER OF INFORMATION BETWEEN YOUTH COURTS AND THE DEPARTMENT

OF CORRECTIONS; REQUIRING THAT APPROPRIATE CONTROL METHODS BE USED BY THE YOUTH COURT AND THE DEPARTMENT OF CORRECTIONS TO ENSURE ADEQUATE INTEGRITY, SECURITY, AND CONFIDENTIALITY OF ANY ELECTRONIC RECORDS; REQUIRING YOUTH COURT INFORMATION TO BE MAINTAINED SEPARATELY FROM ADULT RECORDS; PROVIDING A PENALTY FOR UNAUTHORIZED DISCLOSURE OF OR ACCESS TO RECORDS; AND AMENDING SECTIONS 41-5-103, 41-5-215, 41-5-216, 41-5-1524, AND 41-5-2510, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

“41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) “Adult” means an individual who is 18 years of age or older.
- (2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- (4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.
- (5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- (6) “Cost containment funds” means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.
- (7) “Cost containment review panel” means the panel established in 41-5-131.
- (8) “Court”, when used without further qualification, means the youth court of the district court.
- (9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.
- (10) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (11) “Delinquent youth” means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
 - (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
 - (b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.
- (12) “Department” means the department of corrections provided for in 2-15-2301.
- (13) (a) “Department records” means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system *or information maintained by the youth court through the office of the court administrator.*

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) *"Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.*

(b) *The term does not include information provided by the youth court to the department of public health and human services' management information system.*

~~(19)~~(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(20)~~(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(21)~~(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(22)~~(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24)(a) *“Informal youth court records” means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.*

(b) *The term does not include information provided by the youth court to the department of public health and human services’ management information system.*

~~(23)~~(25)(a) *“Jail” means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest. but*

(b) *The term does not include a ~~collocated~~ colocated juvenile detention facility that complies with 28 CFR, part 31.*

~~(24)~~(26) *“Judge”, when used without further qualification, means the judge of the youth court.*

~~(25)~~(27) *“Juvenile home arrest officer” means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.*

~~(26)~~(28) *“Law enforcement records” means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.*

~~(27)~~(29)(a) *“Legal custody” means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:*

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) *An individual granted legal custody of a youth shall personally exercise the individual’s rights and duties as guardian unless otherwise authorized by the court entering the order.*

~~(28)~~(30) *“Necessary parties” includes the youth and the youth’s parents, guardian, custodian, or spouse.*

~~(29)~~(31)(a) *“Out-of-home placement” means placement of a youth in a program, facility, or home, other than a custodial parent’s home, for purposes other than preadjudicatory detention.*

(b) *The term does not include shelter care or emergency placement of less than 45 days.*

~~(30)~~(32)(a) *“Parent” means the natural or adoptive parent. but*

(b) *The term does not include:*

(i) *a person whose parental rights have been judicially terminated; ~~nor or does it include~~*

(ii) *the putative father of an illegitimate youth unless the putative father’s paternity is established by an adjudication or by other clear and convincing proof.*

~~(31)~~(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(32)~~(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(33)~~(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(34)~~(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(35)~~(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(36)~~(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(37)~~(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(38)~~(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

~~(39)~~(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(40)~~(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

~~(41)~~(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(42)~~(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(42)(a)~~ (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(43)~~(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(44)~~(46) “Youth assessment” means a multidisciplinary assessment of a youth as provided in 41-5-1203.

~~(45)~~(47) “Youth assessment center” means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth’s family in addressing the youth’s behavior.

~~(46)~~(48) “Youth care facility” has the meaning provided in 52-2-602.

~~(47)~~(49) “Youth court” means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

~~(48) “Youth court records” means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services’ management information system.~~

~~(49)~~(50) “Youth detention facility” means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a ~~collocated~~ *colocated* secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(50)~~(51) “Youth in need of intervention” means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth’s parents, foster parents, physical custodian, or guardian despite the attempt of the youth’s parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth’s behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.”

Section 2. Section 41-5-215, MCA, is amended to read:

“41-5-215. Youth court and department records — notification of school. (1) ~~Reports~~ *Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.*

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;
- (i) persons allowed access to the reports referred to under 45-5-624(7); and
- (j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

- (i) the youth has admitted the allegation or a petition has been filed with the youth court; and
- (ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(d) *The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.*

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

~~(5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.~~

~~(6)~~(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

~~(7)~~(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.”

Section 3. Section 41-5-216, MCA, is amended to read:

“41-5-216. Disposition of youth court, law enforcement, and department records. (1) ~~Youth~~ *Formal youth* court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed ~~3 years after supervision for an offense ends on the youth's 18th birthday~~. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to *medical records*, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or reports referred to in 45-5-624(7).

(5) After *formal* youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When *formal* youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services *and by the department* relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services *and the department* shall disassociate the offense and disposition information from the name of the

youth in the *respective* management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) *Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may only be inspected pursuant to subsection (5).*

(b) *The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.*

(c) *Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was only involved in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:*

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) *Nothing in this section prohibits the intraagency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2).*

(9) *Nothing in this section prohibits the intraagency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."*

Section 4. Electronic records — youth records to be separate — formal policies and administrative rules required. (1) (a) The department and the youth court are required to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or maintained in any management information system.

(b) The office of the court administrator shall adopt formal policies, and the department shall adopt administrative rules to institute the requirements in subsection (1)(a).

(2) For the purposes of this part, any references to "sealing", "physically sealed", and "destroyed" must be interpreted to have the same meaning when

applied to electronic records and must be applied to have the same force and effect. A sealed record must be made unavailable for access by any person unless upon court order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and disposition information from the name of the youth.

(3) After [the effective date of this act], any management information system that is developed and that contains formal or informal youth court records or department records must be maintained separately from any adult offender management information system in the criminal justice or corrections system.

Section 5. Penalty for unauthorized disclosure of or access to records. A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of 41-5-215 or 41-5-216 is guilty of a misdemeanor and shall be fined \$500.

Section 6. Section 41-5-1524, MCA, is amended to read:

“41-5-1524. Commitment to department — transfer of records. (1)

Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of *formal and informal youth court records, including* medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(2) *The youth court may share informal youth court records with the department when a youth has been committed to the department of corrections for custody. On the youth’s 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).*

(3) *The department shall maintain the records of a youth committed to the department in a separate management information system and may not include any youth records in an adult offender management information system unless the youth has been adjudicated under 41-5-206.”*

Section 7. Section 41-5-2510, MCA, is amended to read:

“41-5-2510. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth’s impending birthday no later than 90 days before the youth’s 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department’s records, *formal* youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or

guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203."

Section 8. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 41, chapter 5, part 2, and the provisions of Title 41, chapter 5, part 2, apply to [sections 4 and 5].

Approved April 26, 2005

CHAPTER NO. 424

[SB 186]

AN ACT ALLOWING NONMONETARY, LOW-VALUE PRIZE CONTESTS BASED ON THE SIZE OF GAME ANIMALS TAKEN BY HUNTERS; AMENDING SECTION 87-3-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-307, MCA, is amended to read:

"87-3-307. Contests based on size of game animals unlawful. (1) Except as provided in this section, it is unlawful for any person, as defined in 87-2-101, to conduct or sponsor in any manner a contest in which ~~a~~ *any monetary prize or any prize certificate or award in excess of \$50* is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, *or* having the longest body; or any similar contest based upon the size or weight of a game animal or part of a game animal.

(2) This section does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2005

CHAPTER NO. 425

[SB 489]

AN ACT AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR EVALUATING THE EXTENT OF CONTAMINATION AND FORMULATING

REMEDICATION ALTERNATIVES FOR RELEASES AT CERTAIN FACILITIES UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-621, MCA, is amended to read:

“75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the

purpose of meeting the definition of “emergency” in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest.”

Section 2. Section 75-10-704, MCA, is amended to read:

“75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for

indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

Section 3. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, except as provided in ~~subsection (10)~~ subsections (9) and (10), to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection ~~(8)~~ (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.~~

~~(8)~~(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

~~(9)~~(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(4)(9)~~(9) For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199, Laws of 2003, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

(10)(a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (10)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (10)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives and for development and assessment of remediation alternatives.

(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (10)(a) must meet the following schedule:

(i) Contracts for investigations and studies must be in place by August 31, 2005.

(ii) A summary of existing data must be prepared by December 31, 2005.

(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.

(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (10)(g).

(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.

(vi) The contractor shall submit final remediation alternatives by July 31, 2007.

(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007, regarding the progress

being made to meet the requirements of subsection (10)(e). The report must include information on expenditures.

(g) If investigations completed under subsection (10) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.

(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (10)(d)."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 26, 2005

CHAPTER NO. 426

[HB 46]

AN ACT CREATING THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Vehicular homicide while under influence. (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of 61-8-401 or 61-8-406.

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a sentence may not be deferred.

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) *Except as provided in subsection (4),* a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$300 or more than \$1,000. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year

pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) ~~On~~ *Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.*

(3) ~~On~~ *Except as provided in subsection (4), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.*

(4) *If the person has a prior conviction under [section 1], the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."*

Section 3. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) *Except as provided in subsection (4), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$300 or more than \$1,000.*

(2) ~~On~~ *Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.*

(3) ~~On~~ *Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.*

(4) *If the person has a prior conviction under [section 1], the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."*

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 1, and the provisions of Title 45 apply to [section 1].

Section 5. Coordination instruction. If both House Bill No. 97 and [this act] are passed and approved, then 61-8-731 must be amended as follows:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) ~~On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for~~ *Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single conviction under [section 1 of House Bill No. 46] or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:*

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under [section 1 of House Bill No. 46] or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person’s probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(4)~~(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections ~~(4)(a)~~ (5)(a) through ~~(4)(e)~~ (5)(e).

~~(5)~~(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

~~(6)~~(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 427

[HB 179]

AN ACT REQUIRING THE SMALL BUSINESS LICENSING COORDINATION CENTER TO INFORM EACH BUSINESS ENTERPRISE APPLYING FOR A BUSINESS LICENSE THAT THE BUSINESS ENTERPRISE IS REQUIRED TO OBTAIN A BUSINESS NAME FROM THE SECRETARY OF STATE BEFORE ANY OTHER STATE LICENSE APPLICATION MAY BE PROCESSED; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PARTICIPATE IN THE MONTANA SMALL BUSINESS LICENSING COORDINATION PROGRAM AND ON THE BOARD OF REVIEW; AND AMENDING SECTIONS 30-16-201, 30-16-302, AND 30-16-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-201, MCA, is amended to read:

"30-16-201. Designation of small business licensing coordination center — duties of center. The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

- (1) document and analyze current licensing requirements, fees, and procedures;
- (2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;
- (3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;
- (4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;
- (5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;
- (6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements; *The assistance required by this subsection includes a specific obligation for the center to immediately inform each business enterprise applying for a license that the business enterprise is required to obtain a business name from the secretary of state pursuant to Title 35 before any other state license application may be processed.*
- (7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;
- (8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;
- (9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;
- (10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;
- (11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process; and
- (12) perform other administrative tasks delegated to the center to improve state business license administration."

Section 2. Section 30-16-302, MCA, is amended to read:

"30-16-302. Board of review. (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, labor and industry, environmental quality, livestock, revenue, justice, and public health and human services, ~~the secretary of state,~~ a member appointed by the president of the senate, and a member appointed by the speaker of the house. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review by the governor.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

- (a) establish interagency policy and guidelines for the plan;
- (b) review the findings, status, and problems of system operations and recommend courses of action; and
- (c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

(5) The board of review is attached to the department of revenue for administrative purposes only as provided in 2-15-121.”

Section 3. Section 30-16-303, MCA, is amended to read:

“30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

- (a) the departments of agriculture, environmental quality, revenue, justice, labor and industry, and public health and human services;
- ~~(b) the secretary of state;~~
- ~~(c)~~(b) the public service commission; and
- ~~(d)~~(c) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

- (a) the agency administering the license requests that the license be included in the plan;
- (b) the board of review approves including the license by a majority vote of a quorum of the board of review; and
- (c) licensees affected by the license’s inclusion in the plan are given 60 days’ notice of the plan’s implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

- (a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan’s criteria;
- (b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan’s implementation; and
- (c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) (a) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies in an amount equal to no more than one-half of the total cost of processing and issuing a license.

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan.”

Approved April 28, 2005

CHAPTER NO. 428

[HB 192]

AN ACT REVISING LAWS GOVERNING COMMERCIAL DRIVER'S LICENSES TO COMPLY WITH REGULATIONS ISSUED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION SECURITY ADMINISTRATION OF THE DEPARTMENT OF HOMELAND SECURITY; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING, TRANSFERRING, OR RENEWING A HAZARDOUS MATERIALS ENDORSEMENT UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING A SEPARATE APPLICATION AND FINGERPRINT-BASED BACKGROUND CHECK FOR A HAZARDOUS MATERIALS ENDORSEMENT; REQUIRING REVOCATION OR REMOVAL OF A PERSON'S HAZARDOUS MATERIALS ENDORSEMENT TO A COMMERCIAL DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING A PERSON WHOSE HAZARDOUS MATERIALS ENDORSEMENT IS REVOKED TO SURRENDER THE PERSON'S COMMERCIAL DRIVER'S LICENSE AND OBTAIN A REPLACEMENT LICENSE WITHOUT THE ENDORSEMENT; REQUIRING THE DEPARTMENT TO KEEP RECORDS OF REVOCATIONS AND DISQUALIFICATIONS; PROHIBITING AN EMPLOYER FROM PERMITTING THE OPERATION OF A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF STATE LAW OR FEDERAL REGULATION AND PROVIDING PENALTIES; SPECIFYING WHEN SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE OR DISQUALIFICATION COMMENCES; REQUIRING THE DEPARTMENT TO NOTIFY OTHER STATES OF TRAFFIC VIOLATIONS; SPECIFYING THAT A VEHICLE USED FOR MILITARY PURPOSES IS NOT A COMMERCIAL MOTOR VEHICLE; REVISING THE DEFINITION OF "HAZARDOUS MATERIALS"; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY ISSUE A COMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; PROHIBITING THE DEPARTMENT FROM ISSUING A NONCOMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY RENEW A DRIVER'S LICENSE BY MAIL; PROVIDING SEPARATE EXPIRATION PROVISIONS FOR COMMERCIAL DRIVER'S LICENSES; REVISING THE PENALTIES FOR OPERATION OF AN OUT-OF-SERVICE VEHICLE; REQUIRING THAT CERTAIN VIOLATIONS APPEAR ON THE DRIVING RECORD OF A PERSON WHO HOLDS A COMMERCIAL DRIVER'S LICENSE; AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404, 44-1-1005, 61-1-134, 61-1-137, 61-1-505, 61-5-103, 61-5-104, 61-5-105, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-114, 61-5-119, 61-5-121, 61-5-125, 61-5-201, 61-5-213, 61-8-725, 61-8-802, 61-8-803, 61-8-807, 61-8-812, 61-11-101, 61-11-102, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND

PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limitations on issuance of hazardous materials endorsement to commercial driver's license — security threat assessment. (1) The department may not issue, transfer, or renew a hazardous materials endorsement for a person who holds a commercial driver's license unless it receives notice from the transportation security administration of the department of homeland security that:

- (a) the person does not pose a security threat warranting denial of a hazardous materials endorsement;
- (b) the person has been granted a waiver from the transportation security administration; or
- (c) less than 4 years have elapsed since a favorable security threat assessment was performed in a former licensing jurisdiction.

(2) In addition to any requirements under this chapter and in accordance with the security threat assessment standards provided in 49 CFR, part 1572, an applicant who is seeking a hazardous materials endorsement shall:

- (a) complete a separate application as prescribed by the transportation security administration;
- (b) submit, as directed by the department, to a fingerprint-based background check by the transportation security administration; and
- (c) pay to the agent of the transportation security administration the fees imposed under 49 CFR, part 1572, for collection and transmission of fingerprints and applicant information, processing of fingerprint identification records, and the security threat assessment and adjudication.

Section 2. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system.

Section 3. Employer not to permit operation of commercial motor vehicle in violation of state law or federal regulation — criminal and civil penalties. (1) An employer may not knowingly allow, require, permit, or authorize a person to operate a commercial motor vehicle in the United States:

(a) during any period in which the person's commercial driver's license has been suspended, revoked, or canceled by a state, the person has lost the privilege to operate a commercial motor vehicle in a state, or the person has been disqualified from operating a commercial motor vehicle;

(b) during any period in which the person has more than one commercial driver's license;

(c) during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order; or

(d) in violation of a federal, state, or local law or regulation pertaining to railroad crossings.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) Except as provided in subsection (3)(b), an employer who violates this section is subject to a civil penalty of not less than \$2,750 or more than \$11,000.

(b) An employer who violates subsection (1)(d) is subject to a civil penalty of not more than \$10,000.

(c) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the violation occurred or in the first judicial district.

(d) A civil penalty collected under this section must be deposited in the state general fund.

Section 4. Commencement of commercial driver's license suspension or disqualification. A suspension or disqualification under this part commences either from the date of receipt by the department of a report of conviction from a court or another licensing jurisdiction or the day following the completion of a previously imposed period of suspension or disqualification, whichever occurs later.

Section 5. Notification to other states of traffic violations. The department, upon receipt of a report of a conviction or a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, by a person who holds a commercial driver's license from another state or who is licensed in another state, shall report the conviction to the licensing entity in the state where the driver is licensed as follows:

(1) beginning September 30, 2005, within 30 days of conviction; and

(2) beginning September 30, 2008, within 10 days of conviction.

Section 6. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under 15-36-331;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department."

Section 7. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from driver's licenses and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121 must be deposited in the pension trust fund."

Section 8. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121."

Section 9. Section 44-1-1005, MCA, is amended to read:

“44-1-1005. Motor carriers safety — enforcement — violations. (1) The department of justice shall adopt, by rule, standards for safety of operations of:

- (a) any for-hire motor carrier or any private motor carrier;
- (b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;
- (c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;
- (d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and is not used to transport passengers for compensation;
- (e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or
- (f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

(2) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to this section. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to this section is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. This section does not prohibit the inspection of a motor vehicle, as provided for by this section, at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to this section. Each employee designated as a peace officer may:

- (a) issue citations and make arrests;
- (b) issue summonses;
- (c) accept bail;
- (d) serve warrants of arrest;
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;

- (f) make reasonable safety inspections of commercial motor vehicles; and
 - (g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.
- (6) Violations of the standards adopted pursuant to this section are punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated as defined in 61-5-213~~, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101.
- (7) As used in this section, the terms “for-hire motor carrier”, “private motor carrier”, “gross vehicle weight rating”, and “gross combination weight rating” have the same meaning as provided in 49 CFR 390.5.”

Section 10. Section 61-1-134, MCA, is amended to read:

“61-1-134. Commercial motor vehicle defined — exceptions. (1) Except as provided in subsection (2), “commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

- (a) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - (b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;
 - (c) is designed to transport at least 16 passengers, including the driver;
 - (d) is a school bus ~~as defined in 20-10-101~~; or
 - (e) is of any size and is used ~~to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations in the transportation of hazardous materials as defined in 61-1-137.~~
- (2) The following vehicles are not commercial motor vehicles:
- (a) an authorized emergency service vehicle:
 - (i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
 - (ii) entitled to the exemptions granted under 61-8-107; ~~or~~
 - (b) a vehicle:
 - (i) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
 - (ii) used to transport farm products, farm machinery, or farm supplies *to or from the farm* within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and
 - (iii) not used to transport goods for compensation or hire; *or*

(c) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(3) For purposes of this section:

(a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; ~~and~~

(c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; *and*

(d) "school bus" *has the meaning provided in 49 CFR 383.5."*

Section 11. Section 61-1-137, MCA, is amended to read:

"61-1-137. Hazardous material materials. "Hazardous material materials" means: ~~a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported~~

(1) any materials that have been designated as hazardous under 49 U.S.C. 5103 and are required to be placarded under 49 CFR, part 172, subpart F; or

(2) any quantity of materials listed as select agents or toxins in 42 CFR, part 73."

Section 12. Section 61-1-505, MCA, is amended to read:

"61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to ~~such the~~ license, ~~but~~ *Except as provided in 61-5-201(3),* the cancellation of a license is without prejudice and application for a new license may be made at any time after ~~such the~~ cancellation."

Section 13. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) A person who has resided in Montana for more than 120 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who ~~operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if the person has resided in Montana for more than 30 consecutive days:~~

(a) is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle; and

(b) must be licensed under the laws of Montana before operating any commercial motor vehicle.

(3) The department may issue a commercial driver's license to a person who is not a resident of Montana or domiciled in Montana only if:

(a) the person is domiciled in a foreign country with commercial driver license standards, as determined by the federal motor carrier safety administration of the department of transportation, that are not similar to the testing and licensing standards provided in 49 CFR, part 383, subparts F, G, and H; or

(b) the person is domiciled in a state that is prohibited by the federal motor carrier safety administration from issuing commercial driver's licenses under 49 CFR 384.405."

Section 14. Section 61-5-104, MCA, is amended to read:

“61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) *For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.*

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Section 15. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, ~~or~~ revoked, *or canceled or who is disqualified from operating a commercial motor vehicle* in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; ~~or~~

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway; *or*

(9) *who is not a resident of or domiciled in Montana except as provided in 61-5-103(3).*"

Section 16. Section 61-5-107, MCA, is amended to read:

“61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver’s license, commercial driver’s license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver’s license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant’s social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, *cancellation*, disqualification, or withdrawal of a previously issued driver’s license or any driving privileges in another jurisdiction and that the applicant does not have a driver’s license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant’s ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant’s social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant’s driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver’s record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver’s license under state law. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 17. Section 61-5-110, MCA, is amended to read:

“61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. *The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.*

(b) The knowledge test, ~~or~~ road test, or ~~both~~, *skills test* may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3) *or by a certified third-party commercial driver testing program as provided in 61-5-118.*

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests *or skills test* required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and *road or skills test* if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Section 18. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and *road or* skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) ~~A~~ *Except as provided in subsection (3)(d)(v), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.*

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; *or*

(B) *the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.*

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b), ~~and~~ (4)(c), *and* (4)(d), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) *Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.*

(ii) *When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial*

driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

~~(6) Fees for driver's licenses are~~ (a) *Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:*

~~(a)(i)~~ driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

~~(b)(ii)~~ motorcycle endorsement — 50 cents a year or fraction of a year;

~~(c)(iii)~~ commercial driver's license:

~~(i)(A)~~ interstate — ~~\$5~~ \$10 a year or fraction of a year; or

~~(ii)(B)~~ intrastate — ~~\$3.50~~ \$8.50 a year or fraction of a year.;

~~(d) renewal notice—~~

(b) *A renewal notice for either a driver's license or a commercial driver's license is 50 cents.*

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 19. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the *licensing standards and requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;*

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older ~~or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;~~

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and *road or skills* test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license as provided in 61-1-134(2)."

Section 20. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate Replacement licenses. (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom it was issued may, upon the payment of a fee of \$10, obtain a ~~duplicate or substitute~~ replacement permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed.

(2) *If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in [section 2], the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement.*"

Section 21. Section 61-5-119, MCA, is amended to read:

"61-5-119. Definitions Driver rehabilitation specialist — definition. (1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) (1) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) (2) (a) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, vehicle modification prescription, and driver education;

(c) (i) (b) (i) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or

(d) (ii) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(e) (iii) (c) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) ~~For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada.~~"

Section 22. Section 61-5-121, MCA, is amended to read:

“61-5-121. Disposition of fees. (1) ~~The~~ *Except as provided in subsection (3), the* disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and ~~duplicate replacement~~ driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee, *18.25% of each commercial driver's license fee*, and 25% of each ~~duplicate replacement~~ driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, *2.5% of each commercial driver's license fee*, and 3.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee, *16.94% of each commercial driver's license fee*, and 8.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.5% of each driver's license fee, *62.31% of each commercial driver's license fee*, and 62.5% of each ~~duplicate replacement~~ driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate replacement~~ driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

(3) *The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund.*"

Section 23. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

- (a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;
- (b) issuance of a hardship license to an underage applicant;
- (c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;
- (d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;
- (e) restrictions to be imposed upon a probationary license;
- (f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; and
- (g) issuance of a ~~duplicate~~ replacement driver's license."

Section 24. Section 61-5-201, MCA, is amended to read:

"61-5-201. Authority of department to cancel license. (1) The department may cancel a driver's license ~~upon determining if it has reasonable grounds to believe that:~~

- (a) the licensee was not entitled to the issuance; ~~or that~~
 - (b) since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105; ~~or that~~
 - (c) the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.
- (2) Upon cancellation, the licensee shall surrender the canceled license to the department.

(3) *A person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation.*

Section 25. Section 61-5-213, MCA, is amended to read:

"61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter, ~~part 8 of chapter 8, and 61-11-101 and 61-11-102 chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver's license or driving privilege, the term "conviction" shall mean a final conviction, except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction means:~~

- (1) *a plea of guilty or nolo contendere accepted by the court;*
- (2) *an adjudication of guilt that has not been vacated by the appropriate court;*
- (3) *a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;*
- (4) *a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated;*

(5) *the payment of a fine or court cost, regardless of whether it is suspended or rebated; or*

(6) *the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation.”*

Section 26. Section 61-8-725, MCA, is amended to read:

“61-8-725. Penalty for violation of speed limits — no record for certain violations. (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
\$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, *except as provided in subsection (4)*, may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

(4) *The recordkeeping restrictions provided in subsection (2) with respect to a person's driving record do not apply to a speed limit violation or conviction that was committed by:*

(a) *a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or*

(b) *a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle.”*

Section 27. Section 61-8-802, MCA, is amended to read:

“61-8-802. Suspension of commercial driver's license — disqualification — major offenses. (1) Upon receipt of a report of a major offense committed by a person who holds a commercial driver's license or a person required to have a commercial driver's license, the department shall suspend the person's commercial driver's license *and disqualify the person from operating a commercial motor vehicle:*

(a) upon receipt of a report of a first major offense, for 1 year, except that if the major offense occurred while operating a commercial motor vehicle transporting placardable hazardous ~~material~~ *materials*, the suspension must be for 3 years; or

(b) upon receipt of a report of a second or subsequent major offense arising from an incident that is separate from the prior major offense, for life, subject to

department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years.

(2) For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law *in this or any other jurisdiction, a test result under an implied consent law in any other jurisdiction that shows an alcohol concentration of .08 or more while operating a noncommercial motor vehicle or an alcohol concentration of .04 or more while operating a commercial motor vehicle*, or a conviction ~~of or forfeiture of bail not vacated for~~ *in this or any other jurisdiction* of any of the following offenses:

(a) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, a drug, or a combination of the two;

(b) driving or being in actual physical control of:

(i) a noncommercial motor vehicle and having an alcohol concentration of 0.08 or more; or

(ii) a commercial motor vehicle and having an alcohol concentration of 0.04 or more;

(c) leaving the scene of an accident involving death or personal injury or failing to give information and render aid;

(d) using a motor vehicle in the commission of a felony, other than a felony under 61-8-804;

(e) operating a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled or the person is disqualified from operating a commercial motor vehicle; or

(f) causing a fatality through negligent or criminal operation of a commercial motor vehicle."

Section 28. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding or required to hold a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; or

(h) operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported.

(3) A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction."

Section 29. Section 61-8-807, MCA, is amended to read:

"61-8-807. Administration of tests. ~~(1)~~ Tests required under this part must be administered as provided in 61-8-405.

~~(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 CFR part 383.75."~~

Section 30. Section 61-8-812, MCA, is amended to read:

"61-8-812. Suspension of commercial driver's license — operation
Operation of out-of-service vehicle — criminal and civil penalties —
suspension of commercial driver's license. *(1) A person may not operate a commercial motor vehicle during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order issued under state or federal authority.*

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service order issued under state or federal authority is subject to a civil penalty of not less than \$1,100 or more than \$2,750.

(b) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is the county in which the violation occurred or in the first judicial district.

(c) A civil penalty collected under this section must be deposited in the state general fund.

~~(1)(4)~~ *(4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of violating an out-of-service order, the department shall suspend the person's commercial driver's license for:*

(a) 6 months for a first conviction;

(b) 1 year for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous

materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

~~(2)~~(5) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

~~(3)~~(6) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection ~~(4)~~ (4)."

Section 31. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days *after the conviction becomes final*, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, *except for standing or parking statutes or ordinances*, shall forward a record of the conviction, *as defined in 61-5-213*, ~~or forfeiture~~ to the department within 5 days after ~~a the conviction or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance becomes final~~. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) *A conviction becomes final for the purposes of this part upon the later of:*

(a) *expiration of the time for appeal of the court's judgment or sentence to the next highest court;*

(b) *forfeiture of bail that is not vacated; or*

(c) *imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.*

(5) *A court may not take any action, including deferring imposition of judgment, on a conviction that would prevent a conviction for any violation of a*

state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record."

Section 32. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by the department. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

- (a) all applications denied and on each the reasons for denial;
- (b) all applications granted; and
- (c) the name of each licensee whose license has been suspended or revoked by the department and after each name the reasons for the action.

(2) (a) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. The department shall maintain records in a manner that allows an individual record of each licensee, showing the convictions of the licensee and certain traffic accidents in which the licensee has been involved. The records must be readily ascertainable and available for the consideration of the department upon any application for renewal of a license and at other suitable times. A record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) If the department receives notice that a licensee has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the licensee's record.

(c) *The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.*

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of the record to the motor vehicle administrator in the state in which the person is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. A photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: _____
(Print Full Name)"

Section 33. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" ~~means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.~~ *has the meaning provided in 61-5-213.*

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 34. Repealer. Sections 61-8-809, 61-8-810, and 61-8-811, MCA, are repealed.

Section 35. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [sections 1 and 2].

(2) [Sections 3 through 5] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61, chapter 8, part 8, apply to [sections 3 through 5].

Section 36. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definitions of "commercial motor vehicle" and "cancellation" in [this act] in the definition of those terms in Senate Bill No. 285, and the code commissioner shall change the reference to 61-1-137 in the definition of "commercial motor vehicle" to "61-8-801".

Section 37. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 2(1)] of House Bill No. 192 must be amended as follows:

"(1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials, *as defined in 61-8-801*, in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements."

Section 38. Coordination instruction. If Senate Bill No. 459 and [this act] are both passed and approved, then [section 8(7)] of Senate Bill No. 459 must be amended as follows:

"(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated~~ *as defined in 61-5-213*, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101."

Section 39. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 40. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2005.

(2) (a) [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20 and this section] are effective on passage and approval.

(b) [Sections 18(6) and 22] are effective July 1, 2005.

Section 41. Retroactive applicability. [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005.

Approved April 28, 2005

CHAPTER NO. 429

[HB 197]

AN ACT AMENDING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; MAKING IT A FELONY TO PURPOSELY OR KNOWINGLY ABUSE, SEXUALLY ABUSE, OR NEGLECT AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; MAKING IT A MISDEMEANOR FOR A FIRST OFFENSE OF NEGLIGENTLY ABUSING AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; AND AMENDING SECTION 52-3-825, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-825, MCA, is amended to read:

“52-3-825. Penalties. (1) ~~Any~~ A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) (a) ~~An individual~~ A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(b) (i) A person who negligently abuses an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction ~~may~~ shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the ~~individual may~~ person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and ~~may~~ be fined an amount not to exceed \$10,000, or both.

(c) *A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).*

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined *an amount* not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 in value shall be fined *an amount* not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

Approved April 28, 2005

CHAPTER NO. 430

[HB 208]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, THROUGH ITS DIRECTOR, TO GRANT OR ACQUIRE RIGHTS-OF-WAY FOR CERTAIN PURPOSES WITHOUT THE APPROVAL OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE DEPARTMENT, WITH THE CONSENT OF THE COMMISSION, TO MAKE LIMITED PROPERTY BOUNDARY AND WATER RIGHTS ADJUSTMENTS WITH ADJACENT LANDOWNERS; AMENDING SECTIONS 87-1-209 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities *or to adjacent landowners* without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity *or to an adjacent landowner* pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) *When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.*

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

~~(5)~~(6) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6)(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.”

Section 2. Section 87-1-301, MCA, is amended to read:

“87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, *except as provided in 87-1-209(4)*;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana’s youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 431

[HB 216]

AN ACT REVISING THE LAWS REGARDING THE CHILD SUPPORT ENFORCEMENT PROGRAM TO IMPROVE EFFICIENCY AND EFFECTIVENESS; CLARIFYING ACCESS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO A PARTY'S FINANCIAL AND EMPLOYMENT RECORDS; ALLOWING THE DEPARTMENT TO ESTABLISH A MEDICAL SUPPORT ORDER INDEPENDENTLY OF A CHILD SUPPORT ORDER; EXTENDING THE LIFE OF A WARRANT FOR

DISTRAINT FROM 90 DAYS TO 120 DAYS; ALLOWING AN AGREEMENT FOR SERVICE BY ELECTRONIC MEANS OF AN ORDER REQUIRING ENROLLMENT; PROVIDING PRIORITY FOR WITHHOLDING CHILD SUPPORT AND MEDICAL SUPPORT; ALLOWING ATTACHMENT OF CRIME VICTIMS COMPENSATION FOR THE PAYMENT OF MAINTENANCE OR CHILD SUPPORT; AMENDING SECTIONS 40-5-206, 40-5-208, 40-5-225, 40-5-226, 40-5-247, 40-5-412, 40-5-810, 40-5-812, 40-5-813, AND 53-9-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-206, MCA, is amended to read:

“40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee or as an aid to the operation of the IV-D program, including:

- (a) name;
- (b) residential and mailing addresses;
- (c) date of birth;
- (d) social security number;
- (e) wages or other income;
- (f) number of dependents claimed for state and federal income tax withholding purposes;
- (g) *employer’s name, ~~and~~ address, federal employer identification number, North American industry classification system code, active or inactive status of the business and status date, phone number, facsimile number, address type, child support withholding address, and e-mail address of employer;*
- (h) *state and local tax and revenue records of the obligor or obligee or an entity in which the obligor or obligee directly or indirectly has full or partial ownership with rights to participate in general management and control that are derived from the full or partial ownership interest;*
- (i) penal corrections records;
- (j) address, location, and description of any real property or titled personal property; ~~and~~
- (k) any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest; *and*

(l) the information listed in subsection (2)(g) for all Montana employers for the operation of the directory of new hires established under 40-5-922, including information received by electronic transmission.

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

(4) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings and agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

(a) the department received notice that a protective order with respect to the party has been entered against the other party; or

(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

Section 2. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support — obligation enforcement. (1) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the support order must include a medical support order as defined in 40-5-804. *The department may initiate an independent proceeding pursuant to 40-5-225 to*

establish a medical support order, as defined in 40-5-804, without establishing a child support order in the proceeding.

(2) If the department is providing IV-D services for a child, the department shall also enforce any order issued by a court or administrative agency of competent jurisdiction that:

(a) requires the ~~obligor~~ *parent* to make payments for the health or medical needs of the child, whether expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the ~~obligor~~ *parent* to enroll a child in a health benefit plan or individual insurance as defined in 40-5-804. The department may take action to enforce the order under the provisions of part 8 or may impose any other appropriate remedy.

(3) (a) To permit the department to determine whether enforcement action is necessary, if the ~~obligor~~ *parent* is required to enroll the child in a health benefit plan or individual insurance, upon written request by the department, the ~~obligor~~ *parent* shall provide the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(b) Failure of the ~~obligor~~ *parent* to provide the requisite information to the department may be punished as a contempt under 40-5-226.

(4) If the department is providing services for a child and a child support order or modification of a child support order does not include a medical support order as defined in 40-5-804 or fails to include any other provision for the health and medical needs of the child:

(a) upon notice to the ~~obligor~~ *parent*, the ~~obligor~~ *parent* shall enroll the child in a health or medical insurance plan available to the ~~obligor~~ *parent* through an employer or other group for which the premium is partially or entirely paid by the employer or other group; and

(b) the ~~obligor~~ *parent* shall continue enrollment of the child in the plan until:

(i) a medical support order is entered;

(ii) the ~~obligor~~ *parent* can demonstrate to the department that the cost of providing coverage is not reasonable;

(iii) the ~~obligor's~~ *parent's* employment or membership in the group has terminated and the plan is no longer available to the ~~obligor~~ *parent*;

(iv) the employer or group eliminates coverage for all employees or members; or

(v) the department ceases to provide services for the child.

(5) If the ~~obligor~~ *parent* fails to enroll a child in a health or medical insurance plan under subsection (4) or lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not be found if the ~~obligor~~ *parent* shows that the cost of providing coverage for the child is not reasonable."

Section 3. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an

existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. ~~The support~~ *An order issued under this section* must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child, *if any*;

(c) that the monthly support obligation, *if any*, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

(d) that in addition to *or independent of* child support, the parent or parents may be ordered to provide for the child's medical support needs;

(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(f) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(h) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be

credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

- (i) reconciled without the marriage having been dissolved;
- (ii) made joint application to the department to vacate the order or dismiss the proceeding; and
- (iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

- (a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or
- (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

- (i) within 20 days from the date of service of a notice of financial responsibility; and
- (ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, *if any*, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon

notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a *child support or medical* support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

(12) A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 4. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.

(1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical

support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support or medical support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A child support or medical support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support or *medical support* obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or a IV-D agency of another state under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 5. Section 40-5-247, MCA, is amended to read:

“40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based. The warrant must include notice of:

- (i) the existence of exemptions from execution;
- (ii) the procedure by which an exemption may be claimed; and
- (iii) the right to request a hearing to determine an exemption claim.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A warrant for distraint may also be served by acknowledgment of service ~~upon an entity that has entered into an agreement with the department to accept service of a warrant for distraint, including a warrant received by~~

electronic transmission. Upon receipt of the warrant, the served entity shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment and shall return the warrant, along with any funds collected, within ~~90~~ 120 days of receipt of the warrant.

(c) A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly after the time of seizure.

(d) Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an exemption may request a hearing to determine the existence of the exemption. The department shall convene a contested case hearing to determine the claimed exemption. An order entered under this section is a final agency order, subject to judicial review under Title 2, chapter 4, part 7.

(e) A sheriff or levying officer shall return a warrant, along with any funds collected, within ~~90~~ 120 days of the receipt of the warrant.

(f) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

(g) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The

release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.”

Section 6. Section 40-5-412, MCA, is amended to read:

“40-5-412. Delinquency income withholding. (1) (a) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the day the obligor becomes delinquent in the payment of support.

(b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the month in which the payment is due.

(c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) (a) If the department determines that an obligor is delinquent, the department may notify the obligor that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice. If the obligor does not pay the delinquent amount within that time, the department may immediately send an order to withhold income to any payor. Notification that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by subsection (2)(b). ~~The order must be limited to current support unless modified to include arrears as provided in 40-5-413.~~

(b) At the same time an order to withhold income is sent to a payor, the department shall notify the obligor as provided in 40-5-413 that income withholding has been initiated.

(3) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is a delinquency, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(4) To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

(5) The only basis for contesting withholding under this section is a mistake of fact, which does not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

- (a) concerning the obligor's identity;
 - (b) concerning the existence of the support obligation;
 - (c) concerning the amount of support to be paid;
 - (d) in the determination that the obligor is delinquent in the payment of support;
 - (e) in computation of delinquent support amounts owed; or
 - (f) in the allegation that the obligor is in default of an alternative agreement.
- (6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."

Section 7. Section 40-5-810, MCA, is amended to read:

"40-5-810. Notice of intent to enroll — order to enroll — authorization to enroll and participate in health benefit plan — rules.

(1) When a parent is required by a medical support order to obtain a health benefit plan for a child, the parent may be served with a notice of intent to enroll the child in any plan available to that parent. The notice may be issued separately or may be combined with any other notice issued under this part.

(2) The notice must contain a statement of the:

- (a) procedures to follow if the parent wishes to contest enrollment of a child in the plan;
- (b) conditions under which enrollment will occur and that enrollment applies to all current and subsequent plans; and
- (c) period of time within which the parent may file a request for a hearing to contest the enrollment.

(3) For notices issued by the department under this section, hearings must be contested cases under Title 2, chapter 4.

(4) The notice must be served upon the parent by certified mail or personally, including by acknowledgment of service.

(5) An order requiring enrollment of a child in a plan may be issued:

- (a) at any time after the parent's time for filing a request for a hearing on the notice of intent to enroll has lapsed;
- (b) as a result of a hearing that authorizes an order to enroll;
- (c) upon identifying a plan that is available to the parent; or
- (d) upon determining that the cost of the plan available to the parent is reasonable.

(6) An order requiring enrollment in a plan may be served on a plan administrator, an employer, or another individual or entity by certified mail, ~~or~~ personally, including by acknowledgment of service, *or by electronic service upon an entity that has entered into an agreement with the department to accept electronic service of an order under this part.*

(7) A plan administrator shall enroll a child when given a medical support order or an order to enroll the child issued under this section, even if a parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

(8) The signature of either parent, of an authorized representative of the department, or of a third-party custodian or the receipt of an order to enroll the child issued under this section authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

(9) (a) The order to enroll the child must instruct the employer to:

(i) transfer the ~~notice and~~ order to the plan administrator within 20 *working days of service* or by another date specified in the order;

(ii) notify the entity issuing the order of any lapse in insurance coverage or employment;

(iii) notify the entity issuing the order when the child is enrolled;

(iv) withhold any premiums from the parent's income and transfer the premiums to the plan; and

(v) not disenroll the child except in situations specified in the order.

(b) The order to enroll the child must instruct the plan administrator to, within 40 *working days of the date of* receipt of the order:

(i) take steps to cover the child, to notify the employer, and to provide verification of enrollment and a plan description to the department, parents, and any third-party custodian of the child; or

(ii) provide information to the entity issuing the order concerning why coverage is not available.

(10) The department may adopt rules in conformity with federal law establishing the priority of withholdings for financial support and medical support. Regardless of the priority of withholdings, the maximum amount withheld from the parent's wages or salary, including fees, may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1673.

(11) An order to enroll may be modified or replaced at any time to add a child to or remove a child from a plan, consistent with the parent's medical support obligation.

(12) The department may terminate an order to enroll issued by the department when the department is no longer authorized to enforce the parent's medical support obligation, when the parent's medical support obligation is terminated, or when the department determines that the cost of the plan to the parent is not reasonable."

Section 8. Section 40-5-812, MCA, is amended to read:

"40-5-812. Obligations of health benefit plan. (1) Upon receipt of a medical support order requiring a parent to provide coverage for a child *or an order requiring enrollment of a child pursuant to 40-5-810*, the administrator of a health benefit plan who receives the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

(2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively as if done by the obligated parent.

(3) A copy of the medical support order *or an order requiring enrollment of the child pursuant to 40-5-810* must be accepted by the plan administrator as a request and application of the eligible obligated parent requesting that new or continued benefits, including continuation coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

(4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in 40-5-813.

(5) Within 30 days after receipt of a copy of a medical support order *or within 40 working days after the date of an order issued pursuant to 40-5-810*, the health benefit plan shall give written notice to both parents, to the department, and to any third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide written notice to both parents, to the department, whenever public assistance is paid for the child, or to the third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(7) A plan administrator may not terminate a child's coverage unless:

(a) written evidence shows that the medical support order *or the order requiring enrollment of the child pursuant to 40-5-810* is no longer in effect, that the child will be enrolled in another health benefit plan, or that individual insurance is provided;

(b) the employer, union, or other group eliminates coverage for all members or employees;

(c) the plan is available through the obligated parent's employer or other payor of income and the obligated parent's employment or right to receive income from the payor is terminated and continued coverage under COBRA is not available or the time for such coverage is expired; or

(d) the plan is available through the obligated parent's employer or other payor of income, the amount of the premium or the premium together with child support exceeds the limits in this section, and the other parent, the department, or the third-party custodian has not cured the insufficiency under 40-5-811."

Section 9. Section 40-5-813, MCA, is amended to read:

"40-5-813. Obligation of payor. (1) Upon receipt of a medical support order *or an order requiring enrollment of the child pursuant to 40-5-810*, a payor providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium exceeds the maximum, the payor may not withhold the excess. If the ~~total cost of the premium, together with~~ *total cost of the premium, together with* child support to be withheld, ~~exceeds the maximum, for current support and arrears~~

exceeds the maximum amount permitted under the federal Consumer Credit Protection Act, the current child support has priority and the full cost of the premium have priority before the arrears. If the total cost of the premium and current support exceed the amount of permissible garnishment, the current support and arrears take priority over the premium up to the maximum amount permitted under the federal Consumer Credit Protection Act. The payor may not withhold the part of the premium that is in excess of the maximum.

(2) A medical support order or an order requiring enrollment of the child pursuant to 40-5-810 has priority over garnishment of the income of the obligated parent for any purpose, except child support.

(3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment following any break in service, layoff, leave of absence, or other similar circumstance.

(b) Upon the termination of employment, extended layoff, or any other break in service that causes coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the department or the third-party custodian; if either submitted the medical support order, *the order requiring enrollment of the child pursuant to 40-5-810*, or ~~submitted~~ a written notice of interest to the plan.

(4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action against an obligated parent solely because of the issuance of a medical support order *or an order requiring enrollment of the child pursuant to 40-5-810*.

(b) The obligated parent has the burden of proving that the issuance of the medical support order *or the order requiring enrollment of the child pursuant to 40-5-810* was the sole reason for the employer's action.

(c) A payor knowingly violating this section is subject to the contempt powers of the tribunal issuing the medical support order *or the order requiring enrollment of the child pursuant to 40-5-810*. The tribunal may, in addition, impose a civil penalty of not more than \$150."

Section 10. Section 53-9-129, MCA, is amended to read:

"53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process, *except an execution, attachment, or garnishment of a right to compensation for work loss to secure payment of maintenance or child support.*

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee."

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 432

[HB 220]

AN ACT REQUIRING LOCAL GOVERNMENTS TO USE ELECTRONIC FUNDS TRANSFERS IN MAKING PAYMENTS TO THE STATE IF SO REQUESTED BY THE STATE TREASURER OR A STATE AGENCY AND IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO CONDUCT ELECTRONIC FUNDS TRANSFERS; AUTHORIZING A STATE AGENCY OR THE STATE TREASURER TO MAKE PAYMENTS TO LOCAL GOVERNMENTS BY ELECTRONIC FUNDS TRANSFER IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO RECEIVE PAYMENTS BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTIONS 7-6-2601, 7-6-4501, AND 17-8-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2601, MCA, is amended to read:

“7-6-2601. Details related to county warrants — *payments to state* — definition. (1) Warrants issued pursuant to 7-6-2202(1) must be signed by the county clerk and the presiding officer of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) *All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.*

(4)(5) For the purposes of this part, “warrant” includes a check and an electronic funds transfer.”

Section 2. Section 7-6-4501, MCA, is amended to read:

“7-6-4501. Interest on unpaid warrants — *payments to state* — definition. (1) When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the warrant is not paid for want of funds, the city treasurer or town clerk shall endorse thereon “Not paid for want of funds”, annexing the date of presentation, and signing the treasurer’s or clerk’s name to the warrant.

(2) From the time of the endorsement until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.

(3) *All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the city or town has the technology to conduct electronic funds transfers.*

~~(3)~~(4) As used in this part, "warrant" includes a check and an electronic funds transfer."

Section 3. Section 17-8-311, MCA, is amended to read:

"17-8-311. Payments to local government entities — notice. (1) For the purposes of this section, the following definitions apply:

(a) "Finance officer" means the county treasurer, city treasurer, town clerk, or the equivalent provided for in Title 7, chapter 3.

(b) "Local government entity" means a public entity that, whether or not governed by the legislative body of the local government, is required by law to conduct financial affairs through the finance officer of a city, town, or county. The term does not include a school district or a conservation district.

(2) (a) All payments made by a state agency *or the state treasurer* to any city, town, county, or local government entity must be payable to the finance officer of the appropriate city, town, or county.

(b) *Any payment referred to in subsection (2)(a) may be made by electronic funds transfer at the discretion of the state agency or state treasurer if the entity receiving the payment has the technology to receive payment by electronic funds transfer.*

(c) If the payment is to be deposited to the credit of a local government entity, the finance officer shall mail a notice of receipt of the payment to the local government entity. When applicable, the finance officer shall deposit the payment in the appropriate fund or account to the credit of the local government entity.

(3) If the state agency *or the state treasurer* is unable to determine if the payee is a government entity, the state agency *or state treasurer* shall process the claim as if it was not payable to a government entity. The state agency *or state treasurer* shall also mail a notice of issuance of the payment to the finance officer of the county and city to which the payment was issued.

(4) If a finance officer of a county receives a payment under subsection (2) or a notice of issuance under subsection (3), ~~he~~ *the finance officer* shall notify the county clerk and recorder that the payment or notice has been received."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 433

[HB 230]

AN ACT REQUIRING CERTIFIED NOTICE OF ADEQUATE STORM WATER DRAINAGE AND MUNICIPAL FACILITIES TO THE REVIEWING AUTHORITY PRIOR TO FINAL PLAT APPROVAL RATHER THAN WITHIN 20 DAYS AFTER PRELIMINARY PLAT APPROVAL; PROVIDING FOR CERTIFICATION THAT ADEQUATE MUNICIPAL FACILITIES FOR THE SUPPLY OF WATER AND DISPOSAL OF SEWAGE AND SOLID WASTE WILL BE PROVIDED; AND AMENDING SECTION 76-4-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-127, MCA, is amended to read:

“76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, ~~within 20 days after preliminary plat approval~~ *prior to final plat approval* under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

- (a) the name and address of the applicant;
- (b) a copy of the preliminary plat or a final plat when a preliminary plat is not necessary;
- (c) the number of proposed parcels in the subdivision;
- (d) a copy of any applicable zoning ordinances in effect;
- (e) how construction of the sewage disposal and water supply systems or extensions will be financed;
- (f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;
- (g) the relative location of the subdivision to the city or town;
- (h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided ~~within 1 year after the notice of certification is issued~~ *within the time provided in 76-3-507;*
- (i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- (j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Section 2. Coordination instruction. If both Senate Bill No. 116 and [this act] are passed and approved, then 76-4-127 must read as follows:

“76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, ~~within 20 days after preliminary plat approval~~ *prior to final plat approval* under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

- (a) the name and address of the applicant;
- (b) a copy of the preliminary plat *included with the application for the proposed subdivision* or a final plat when a preliminary plat is not necessary;
- (c) the number of proposed parcels in the subdivision;
- (d) a copy of any applicable zoning ordinances in effect;

- (e) how construction of the sewage disposal and water supply systems or extensions will be financed;
- (f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;
- (g) the relative location of the subdivision to the city or town;
- (h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within ~~1 year after the notice of certification is issued~~ *the time provided in 76-3-507*;
- (i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- (j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Approved April 28, 2005

CHAPTER NO. 434

[HB 236]

AN ACT MAKING PERMANENT THE CLARK FORK RIVER BASIN TASK FORCE; PROVIDING DIRECTION ON TASK FORCE RESPONSIBILITIES IN THE FUTURE; AMENDING SECTION 85-2-350, MCA; REPEALING SECTION 6, CHAPTER 447, LAWS OF 2001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-350, MCA, is amended to read:

“85-2-350. ~~(Temporary)~~ Clark Fork River basin task force — duties — water management plan. (1) The governor’s office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare ~~a water management plan for the Clark Fork River basin pursuant to proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin.~~ The designated appropriate entity shall:

- (a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;
- (b) provide advice and assistance in selecting representatives to serve on the task force;
- (c) develop, in consultation with the task force, appropriate opportunities for public participation in ~~the development of a studies of water management plan in the Clark Fork River basin;~~ and
- (d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:
 - (i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River. ~~At least one representative from this basin must be a representative of the Confederated Salish and Kootenai tribal government;~~

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

~~(2) The task force shall examine, for applicability to the water management plan, existing laws, rules, plans, and other provisions affecting water management in the Clark Fork River basin, including:~~

~~(a) the temporary closure of Bitterroot River subbasins pursuant to 85-2-344;~~

~~(b) the closure of the Upper Clark Fork River basin pursuant to 85-2-336;~~

~~(c) the restrictions on ground water development in the Upper Clark Fork River basin provided for in 85-2-337; and~~

~~(d) the Upper Clark Fork River basin management plan, adopted as a section of the state water plan pursuant to 85-1-203. Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government must have the right to appoint a representative to the task force.~~

(3) The task force shall:

(a) *identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;*

(b) *identify data gaps regarding basin water resources, especially ground water;*

(c) *coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;*

(d) *provide a forum for all interests to communicate about water issues;*

(e) *advise government agencies about water management and permitting activities in the Clark Fork River basin;*

(f) *consult with local and tribal governments within the Clark Fork River basin;*

(g) *make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and*

(h) *report to:*

(i) *the department on a periodic basis;*

(ii) *the environmental quality council annually; and*

(iii) *the natural resources and commerce appropriations subcommittee each legislative session. prepare a water management plan for the Clark Fork River basin pursuant to 85-1-203. The water management plan must identify options*

~~to protect the security of water rights and provide for the orderly development and conservation of water in the future.~~

~~(4) The task force shall submit an interim report annually by October 31 on its activities to the governor and the legislature.~~

~~(5) The water management plan, including the information prepared by the task force under this section, must be submitted to the 59th legislature, as provided in 85-1-203, by September 15, 2004. (Terminates April 15, 2005—see. 6, Ch. 447, L. 2001.)~~

Section 2. Repealer. Section 6, Chapter 447, Laws of 2001, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 435

[HB 250]

AN ACT PROVIDING THAT A HEALTH CARE FACILITY OR GOVERNMENT AGENCY THAT DEALS WITH HEALTH CARE DOES NOT COMMIT THE CRIME OF VIOLATING PRIVACY IN COMMUNICATIONS IF IT RECORDS A HEALTH CARE EMERGENCY TELEPHONE COMMUNICATION MADE TO THE FACILITY OR AGENCY; AND AMENDING SECTION 45-8-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-213, MCA, is amended to read:

“45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or *to public* employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; ~~or~~

(iii) persons given warning of the transcription or recording; *or*

(iv) *a health care facility as defined in 50-5-101 or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.*

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or *to public* employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Approved April 28, 2005

CHAPTER NO. 436

[HB 254]

AN ACT MAKING IT A CIVIL OFFENSE FOR A MEDICAL PRACTITIONER TO ISSUE A WRITTEN PRESCRIPTION ON WHICH THE NAME OF THE DRUG, DOSAGE, INSTRUCTIONS, OR IDENTIFIERS OF THE PRESCRIBING MEDICAL PRACTITIONER CANNOT BE DETERMINED; PROVIDING FOR ENFORCEMENT; REQUIRING ADOPTION OF RULES; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Civil penalty for unreadable prescription. (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

Section 2. Time for adopting rules. Rules required by [section 1(2)] must be adopted by July 1, 2006.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 1, and the provisions of Title 37, chapter 2, part 1, apply to [section 1].

Section 4. Applicability. [This act] applies to a prescription written after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 437

[HB 302]

AN ACT INCLUDING THE DISSEMINATION OF INFORMATION BY A BOARD OF TRUSTEES OR A SCHOOL SUPERINTENDENT OR A DESIGNATED EMPLOYEE IN A DISTRICT WITH NO SUPERINTENDENT RELATED TO A BOND ISSUE OR LEVY SUBMITTED TO THE ELECTORS AS "PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW"; AMENDING SECTIONS 2-2-121 AND 13-35-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) ~~A~~ *Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:*

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) *in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.*

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to *perform activities properly incidental to another activity required or authorized by law or to express personal political views.*

(5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 438

[HB 317]

AN ACT ALLOWING A SCHOOL BOARD TO MEET IN ANY BUILDING THAT IS ACCESSIBLE TO THE PUBLIC; AND AMENDING SECTION 20-3-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

“20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) in first-class elementary districts, not less than one regular meeting each month; or
- (d) in any other district, regular meetings at least quarterly.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or, *upon the unanimous vote of the trustees*, in a publicly ~~owned~~ *accessible* building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), “unforeseen emergency” means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.”

Approved April 28, 2005

CHAPTER NO. 439

[HB 332]

AN ACT APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED FOR THE LOW-INCOME ENERGY ASSISTANCE PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated \$903,255 from the state general fund for fiscal year 2005 to the department of public health and human services to be used for the low-income energy assistance program authorized in 53-2-201.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 440

[HB 345]

AN ACT EXTENDING THE PERIOD OF TIME FOR WHICH A CAUSE OF ACTION FOR A FRAUDULENT TRANSFER MAY BE FILED; AMENDING SECTION 31-2-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-2-341, MCA, is amended to read:

“31-2-341. ~~Extinguishment~~ Termination of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this part is ~~extinguished~~ *terminated* unless an action is brought under:

(1) 31-2-333(1)(a) within ~~2~~ 4 years after the transfer was made or the obligation was incurred or, if later, within ~~1-year~~ 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) 31-2-333(1)(b) or 31-2-334(1) within ~~2~~ 4 years after the transfer was made or the obligation was incurred; or

(3) 31-2-334(2) within ~~1-year~~ 2 years after the transfer was made or the obligation was incurred.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 441

[HB 348]

AN ACT RESTRICTING YOUTH ACCESS TO ALCOHOL; AND PROVIDING FOR REGISTRATION OF SALES OF KEGS OF BEER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Keg registration. (1) A licensee may not sell a keg of beer unless an identification tag is attached to the keg by the licensee.

(2) An identification tag must consist of paper, plastic, metal, or durable material that is not easily damaged or destroyed. An identification tag may be attached to a keg at the time of sale with a nylon tie or cording, wire tie or other metal attachment device, or other durable means of tying or attaching the tag to the keg.

(3) The identification information contained on the tag must include:

(a) the licensee’s name, address, and telephone number; and

(b) a prominently visible warning that intentional removal or defacement of the tag is a criminal offense.

(4) A retailer that accepts the return of a keg that does not have an identification tag attached shall obtain the information required in [section 2] on the original purchaser, to the extent possible, and obtain the same information on the person returning the keg. This information must be kept on file with the retailer for not less than 45 days from the date of return.

(5) A person, other than the licensee, the wholesaler of malt beverages, or a law enforcement officer, may not intentionally remove identification placed on a keg in compliance with this section.

(6) For the purposes of [sections 1 through 4], the following definitions apply:

(a) "Keg" means a brewery-sealed, single container that contains not less than 7 gallons of beer.

(b) "Licensee" means a person who is licensed under Title 16, chapter 4, and who sells kegs to a consumer.

(7) The department shall develop and make available the identification tags required by this section.

Section 2. Recordkeeping. (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale;

(d) the keg identification number required under [section 1]; and

(e) the purchaser's signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to [section 3].

Section 3. Enforcement. (1) A law enforcement officer may not request information on file about the original purchaser of a keg unless in connection with a violation of 16-6-305, 45-5-623, or 45-5-624(4). The officer shall return any recovered keg to the licensee and verify the information on file about the original purchaser.

(2) The deposit on the keg and any related deposit to the licensee must be forfeited by the original purchaser.

Section 4. Violations. (1) A person who knowingly fails to attach a keg tag as provided in [section 1] is guilty of a misdemeanor and shall be fined an amount not to exceed \$100.

(2) A person may not remove, deface, or damage the identification on a keg purposely to make it unreadable. A person convicted of purposely removing or defacing a tag shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for not more than 6 months, or both.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 16, chapter 3, part 3, and the provisions of Title 16, chapter 3, part 3, apply to [sections 1 through 4].

Approved April 28, 2005

CHAPTER NO. 442

[HB 349]

AN ACT REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public ~~commits no~~ *does not commit a* criminal offense solely by reason of being in ~~such an~~ *intoxicated* condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public shall proceed in the manner ~~as provided by in~~ 53-24-303 *and subsection (3) of this section.*

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated ~~or incapacitated by alcohol in jail~~ until the person is no longer creating a risk to ~~himself self~~ or others.

(3) *A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.*

~~(4) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions~~ *(4) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions."*

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons and ~~persons incapacitated by alcohol.~~ (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health *care* facility by the police, ~~if the person consents to an offer for help.~~

(2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime~~ *A peace officer, acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions."*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 443

[HB 453]

AN ACT PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-227, MCA, is amended to read:

“75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, *a violation of an order issued under this part*, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or ~~his~~ *the violator's* agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, *an order assessing an administrative penalty pursuant to 75-10-228, or both*. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after *a* hearing, the board finds ~~no~~ *that a* violation has *not* occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.*”

Section 2. Section 75-10-228, MCA, is amended to read:

“75-10-228. Civil and administrative penalties. (1) A person who violates ~~any~~ *a* provision of this part, a rule adopted *or an order issued* under this part, or a license provision is subject to *an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000* ~~\$1,000~~ *\$1,000*. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection*

action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Fines and penalties collected ~~for violations of this part~~ *under this section* must be deposited in the solid waste management account provided for in 75-10-117.”

Section 3. Section 75-10-540, MCA, is amended to read:

“75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted *or an order issued* under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator’s agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time, *an order assessing an administrative penalty pursuant to 75-10-542, or both.* The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department’s order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department’s order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

(4) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.”*

Section 4. Section 75-10-542, MCA, is amended to read:

“75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates *a provision* of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to *an administrative penalty of not more than \$50 or a civil penalty of not more than \$50 \$250.* Each day upon which a violation of this part, ~~or~~ a rule, or *an order* occurs is a separate violation.

(3) *The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.”*

Section 5. Section 75-11-218, MCA, is amended to read:

“75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person’s agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, closure, or inspection, ~~or~~ an order to take necessary corrective action within a reasonable time as stated in the order, ~~or an order assessing an administrative penalty pursuant to 75-11-223.~~ Every A notice and order must be signed by the director of the department or the director’s ~~deputy~~ *designee* and must be served personally or by certified mail upon the person or the person’s agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department’s order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department’s order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

(5) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.”*

Section 6. Section 75-11-223, MCA, is amended to read:

“75-11-223. Civil and administrative penalties. (1) ~~Any~~ A person who violates ~~any~~ a provision of this part, a rule adopted under this part, or an order of the department or the board is subject to *an administrative penalty not to exceed \$500 per violation* or a civil penalty not to exceed \$10,000 per violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.* Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.”

Section 7. Section 76-4-108, MCA, is amended to read:

“76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted *or an order issued* under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator’s agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. *A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109.* The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, *a rule adopted under this part, or an order issued under this part* has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.”

Section 8. Section 76-4-109, MCA, is amended to read:

“76-4-109. Penalties. (1) ~~A person violating any~~ *who violates a provision of this part, except 76-4-122(1), or any a rule adopted or an order issued under this part is guilty of an offense and subject to a fine of not to exceed \$1,000.*

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule *adopted* or order issued under this part is subject to *an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000* ~~\$1,000~~ *\$1,000*. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.”

Section 9. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 75-10-228 in both House Bill No. 429 and [this act] are void and 75-10-228 must read as follows:

“75-10-228. Civil penalties. (1) A person who violates ~~any~~ a provision of this part, a rule adopted ~~or an order issued~~ under this part, or a license provision is subject to ~~an administrative penalty not to exceed \$250 or~~ a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.* Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429].*

~~(3)~~(4) Fines and penalties collected ~~for violations of this part~~ under this section must be deposited in the solid waste management account provided for in 75-10-117.”

Section 10. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 75-10-542 in both House Bill No. 429 and [this act] are void and 75-10-542 must read as follows:

“75-10-542. Penalties. (1) A person who ~~willfully~~ *purposely or knowingly* violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined *an amount* not to exceed \$250, *be* imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates *a provision of* this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to *an administrative penalty of not more than \$50 or* a civil penalty of not more than ~~\$50~~ \$250. Each day upon which a violation of this part, ~~or~~ a rule, or *an order* occurs is a separate violation.

(3) *Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429]. The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*”

Section 11. Coordination instruction. If House Bill No. 429 and [this act] are passed and approved, then [section 19(2)] of House Bill No. 429 is void.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 444

[HB 474]

AN ACT ELIMINATING THE REQUIREMENT THAT A COUNTY LEGAL NOTICE BE PUBLISHED IN A NEWSPAPER WITH A PAID CIRCULATION AND A PERIODICALS MAILING PERMIT; AND AMENDING SECTION 7-1-2121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2121, MCA, is amended to read:

“7-1-2121. Publication and content of notice — proof of publication.

Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must be:

(a)(i) of general ~~paid~~ circulation ~~with a periodicals mailing permit~~;

(b)(ii) published at least once a week; and

(c)(iii) published in the county where the hearing or other action will take place.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.”

Approved April 28, 2005

CHAPTER NO. 445

[HB 536]

AN ACT REVISING THE LAWS RELATING TO THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; REMOVING THE TERMINATION OF THE SURCHARGE; PROVIDING FOR THE DEPOSIT OF THE SURCHARGE IN THE STATE GENERAL FUND TO BE USED FOR FUNDING COURT INFORMATION TECHNOLOGY; REQUIRING THE SUPREME COURT ADMINISTRATOR TO REPORT TO THE LEGISLATURE ON THE STATUS OF JUDICIAL BRANCH INFORMATION TECHNOLOGY AND TO COORDINATE WITH THE STATE STRATEGIC INFORMATION TECHNOLOGY PLAN; AMENDING SECTIONS 3-1-317 AND 3-1-702, MCA; REPEALING SECTION 3-5-904, MCA, AND SECTION 5, CHAPTER 498, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-317, MCA, is amended to read:

“3-1-317. ~~(Temporary)~~ (Temporary) User surcharge for court information technology — exception. (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a \$10 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a \$10 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a \$10 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the ~~account established in 3-5-904~~ *state general fund to be used for state funding of court information technology. (Terminates June 30, 2005—sec. 5, Ch. 498, L. 2003.) (Terminates June 30, 2009.)*

Section 2. Section 3-1-702, MCA, is amended to read:

“3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) *report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.*

~~(3)~~(4) recommend to the supreme court improvements in the judiciary;

(4)(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

~~(5)~~(6) administer state funding for district courts, as provided in chapter 5, part 9;

~~(6)~~(7) administer the judicial branch personnel plan; and

~~(7)~~(8) perform other duties that the supreme court may assign.”

Section 3. Repealer. Section 3-5-904, MCA, and section 5, Chapter 498, Laws of 2003, are repealed.

Section 4. Effective date. [This act] is effective June 28, 2005.

Approved April 28, 2005

CHAPTER NO. 446

[HB 590]

AN ACT ALLOWING FOR THE REACTIVATION OF AN ELECTOR IF THE ELECTOR APPEARS IN ORDER TO VOTE OR VOTES BY ABSENTEE BALLOT IN ANY ELECTION; AND AMENDING SECTIONS 13-2-222 AND 13-2-512, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-222, MCA, is amended to read:

“13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears in order to vote or votes by absentee ballot in ~~a federal~~ any election;

(b) notifies the county election administrator in writing of the elector’s current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector’s name on the active voting list for that county.

~~(2) To be effective for a nonfederal election, a reactivation of an elector must be accomplished no later than 30 days before the election.~~

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted."

Section 2. Section 13-2-512, MCA, is amended to read:

"13-2-512. Right to vote when precinct or name changed — inactive elector — change of status. (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector's former name at the first election at which the elector offers to vote after the change unless the elector's registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector's correct residence address and name when offering to vote and shall complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

~~(4) If an inactive elector appears to vote or votes by absentee ballot in a federal election, that elector must be allowed to vote and must be removed from the inactive list and placed on the active list."~~

Approved April 28, 2005

CHAPTER NO. 447

[HB 742]

AN ACT REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND MAINTAIN A HEALTH CARE DECLARATION REGISTRY FOR DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; ESTABLISHING METHODS FOR FILING DECLARATIONS AND FOR ACCESSING THE REGISTRY BY CERTAIN PERSONS AND HEALTH CARE PROVIDERS; PROVIDING AN APPROPRIATION TO BE USED IN ESTABLISHING AND MAINTAINING THE REGISTRY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Health care declaration registry — website — rulemaking. (1) The attorney general shall establish and maintain a health care declaration registry.

(2) The registry must be accessible through a website maintained by the attorney general.

(3) The registry must be used to store declarations pertaining to life-sustaining treatment made pursuant to 50-9-103 that are filed with the attorney general.

(4) The registry must be maintained in a secure database that is designed to provide authorized health care providers with immediate access to the registry at all times.

(5) The attorney general may adopt rules to implement the creation and maintenance of a health care declaration registry and for the creation and maintenance of the statewide education and outreach program created in [section 5].

Section 2. Health care declaration registry filing provisions — special revenue fund — failure to file declaration or notify of revocation — duty of health care providers to access registry. (1) An individual or a person designated by the individual may file with the attorney general, for entry into the health care declaration registry, a declaration provided for in 50-9-103 that pertains to life-sustaining treatment.

(2) (a) The attorney general may accept gifts, grants, donations, bequests, and other forms of voluntary contributions to support, promote, and maintain the registry.

(b) There is a health care declaration account in the state special revenue fund. Money received pursuant to subsection (2)(a) and any money transferred from the general fund to the health care declaration registry must be deposited in the account and must be used by the attorney general to create and maintain the health care declaration registry and to create and maintain an education and outreach program for the public regarding advance health care planning and end-of-life health care decisionmaking.

(3) (a) Failure to file the declaration with the attorney general does not affect the validity of the declaration.

(b) Failure to notify the attorney general of a revocation of the declaration made pursuant to 50-9-104, does not affect the validity of the revocation.

(4) A health care provider is not required to access the registry in order to determine if a qualified patient has filed a declaration with the attorney general.

Section 3. Entry of declaration into health care declaration registry — removal of declaration. (1) Upon receipt of a declaration pertaining to life-sustaining treatment, the attorney general shall determine if the declaration is in compliance with the provisions of 50-9-103. If the declaration is not in compliance with the provisions of 50-9-103, the attorney general shall return the declaration together with a statement that the declaration was not filed due to its nonconformance with the requirements of 50-9-103.

(2) (a) If a declaration is accepted for filing, the attorney general shall create a digital copy of the declaration and enter it into the database of the health care declaration registry.

(b) The attorney general shall assign a unique access code to each individual who files a declaration that may be used by that individual or by a health care provider in a case in which the individual becomes a qualified patient to access the registry to view the filed declaration.

(c) (i) After entering the digital copy of the declaration in the registry, the attorney general shall return to the individual filing the declaration the original declaration along with two wallet-sized cards that indicate that a copy of the declaration exists in the registry and that the name and access code on the cards may be used to access the registry to view an electronic copy of the declaration.

(ii) (A) In addition to the materials provided to an individual filing a declaration under subsection (2)(c)(i), the attorney general shall include a form asking the individual filing the declaration to indicate on the form the privacy level that the individual desires with respect to accessing the declaration and asking the individual to return the form to the attorney general.

(B) An individual shall choose between two privacy levels. The standard privacy level allows access by the individual filing the declaration, appropriate health care providers, anyone with the name and access code, and anyone with the social security number, birth date, and mother's maiden name of the individual who filed the declaration. The higher privacy level allows access only by the individual filing the declaration, appropriate health care providers, and anyone with the name and access code. If a form indicating a choice of privacy level is not returned to the attorney general, the attorney general shall use the standard privacy level in determining access to a declaration.

(3) If the attorney general receives a notice of the revocation of a declaration that is contained in the health care declaration registry or is notified that a person who is the subject of a declaration filed in the registry is deceased, the attorney general shall remove that declaration from the registry.

Section 4. Registry information — confidentiality — transfer of information. (1) The health care declaration registry must be designed to be accessible only by entering a name and access code on the internet website maintained by the attorney general or by the use of a password issued pursuant to subsection (3).

(2) Names and access codes are confidential and may not be disclosed to any person other than the person who submitted the declaration, a person named in the declaration, or a health care provider for whom the person named in the declaration is a qualified patient.

(3) (a) The attorney general shall issue confidential passwords to attending physicians, attending advanced practice registered nurses, and hospital medical records department staff that allow them to search the health care declaration database for a qualified patient who is unable to communicate health care choices.

(b) The attorney general shall establish by rule procedures for applying for and the issuance of confidential passwords to those persons described in subsection (3)(a).

(4) At the request of a person who submitted a declaration or who is named in the declaration, the attorney general may transmit the information received regarding the declaration to the registry system of another jurisdiction as identified by the requestor.

Section 5. Statewide education and outreach program. (1) The attorney general shall design, maintain, and administer a public education and outreach program to be conducted throughout the state pertaining to advance health care planning and end-of-life health care decisionmaking.

(2) The program must be designed to:

(a) increase the public's awareness of the importance of planning for end-of-life health care;

(b) improve the public's understanding of the various health situations that an individual may face if the individual is unable to express the individual's health care wishes; and

(c) explain the need for readily available legal documents that express an individual's health care wishes.

Section 6. Appropriation. There is appropriated \$80,000 from the general fund to the attorney general for the biennium ending June 30, 2007, for the health care declaration registry and a related public education program.

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [sections 1 through 5].

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 448

[SB 108]

AN ACT REVISING REQUIREMENTS FOR CERTIFICATION OF INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AUTHORITY TO SUSPEND OR REVOKE CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY; CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTIONS 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401, 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court ruled in *Wild v. Fregein Construction*, 2003 MT 115, 315 Mont. 425, 68 P.3d 855, that the independent contractor exemption certificate does not raise a conclusive presumption as to the status of a person as an independent contractor and that an employer has an obligation to determine whether an individual is treated as an independent contractor or as an employee; and

WHEREAS, the Montana Supreme Court in the *Wild* decision ruled that it is against the public policy of the state for an employer to coerce a worker to work as an independent contractor by offering to pay an independent contractor at a rate higher than the employer pays employees; and

WHEREAS, the Montana Supreme Court in the *Wild* decision affirmed the twin determinants of independent contractor status as being "A" issues of control and "B" whether the individual is in an independent business, commonly known as the "A-B" test, and emphasized the necessity of both factors being present, with performing work for other persons being an indication of an independent business; and

WHEREAS, the concurring opinion in the Wild decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and

WHEREAS, the Wild decision created a great deal of uncertainty in matters involving independent contractors and employees in the business community, with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th Legislature; and

WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse the Wild decision and to restore the conclusive presumption of an independent contractor exemption certificate as well as to allow employers to pay persons with the independent contractor exemption certificate at a rate higher than the rate paid to employees and additionally to allow a person with an independent contractor exemption certificate to work for only one employing unit without becoming an employee as well as to waive the benefits of the workers' compensation and occupational disease laws.

Be it enacted by the Legislature of the State of Montana:

Section 1. Independent contractor certification. (1) (a) A person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

- (a) the applicant's name and address;
- (b) the applicant's social security number;
- (c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and the Occupational Disease Act of Montana and is precluded from obtaining benefits under either of those acts unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act and the Occupational Disease Act of Montana, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

- (a) suspended or revoked pursuant to [section 2]; or
- (b) canceled by the independent contractor.

(9) If the department denies an application for an independent contractor exemption certificate, the applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial.

Section 2. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of [section 1(4)].

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

- (a) provided misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; or

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate.

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department to suspend or revoke an independent contractor exemption certificate may be appealed in the same manner as provided in [section 1(9)] for denial of an application for an independent contractor exemption certificate.

Section 3. Independent contractor violations — penalty. (1) A person may not:

(a) perform work as an independent contractor without first:

(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to [section 1(1)(a)]; or

(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;

(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of [section 1(4)].

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

Section 4. Section 39-8-102, MCA, is amended to read:

“39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

- (1) “Applicant” means a person that seeks to be licensed under this chapter.
- (2) “Client” means a person that obtains all or part of its workforce from another person through a professional employer arrangement.
- (3) “Controlling person” means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.
- (4) “Department” means the department of labor and industry.
- (5) “Employee leasing arrangement” means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.
- (6) “Licensee” means a person licensed as a professional employer organization or group under this chapter.
- (7) “Person” means an individual, association, company, firm, partnership, corporation, or limited liability company.
- (8) (a) “Professional employer arrangement” means an arrangement by contract or otherwise under which:
 - (i) a professional employer organization or group assigns employees to perform services for a client;
 - (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
 - (iii) the employer responsibilities are shared by the professional employer organization or group and the client.
- (b) The term does not include:
 - (i) services performed by a temporary service contractor;
 - (ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:
 - (A) that person’s principal business activity is not entering into professional employer arrangements; and
 - (B) that person does not represent to the public that the person is a professional employer organization or group;
 - (iii) arrangements existing for employment of an independent contractor, ~~as defined in 39-71-120 working under an independent contractor exemption certificate provided for in [section 1];~~ and
 - (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.
- (9) “Professional employer group” or “group” means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) (a) "Professional employer organization" means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Section 5. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, ~~but~~.

(b) *The term* does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person ~~that has or had in its~~ *in whose* employ one or more individuals ~~performing perform or performed services for it~~ within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions ~~are required to~~ *must* be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual ~~who renders service in the course of an occupation and~~

~~(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and~~

~~(b) is engaged in an independently established trade, occupation, profession, or business working under an independent contractor exemption certificate provided for in [section 1].~~

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which ~~it~~ *the institution* awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iii) a no-additional-cost service.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) ~~An individual's "weekly~~ "Weekly benefit amount" means the amount of benefits that ~~the~~ *an* individual would be entitled to receive for 1 week of total unemployment."

Section 6. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under

an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act;

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian; or

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event.

(2) An individual found to be an independent contractor by the department under the terms of ~~39-71-401(3)~~ [section 1] is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 7. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) ~~It is an~~ An objective of the Montana workers’ compensation system is to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are

not intended to make an injured worker whole; ~~they~~ but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of Title 39, chapters 71 and 72, unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

~~(2)(3)~~ A worker's removal from the ~~work force due to~~ workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

~~(3)(4)~~ Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

~~(4)(5)~~ Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

~~(5)(6)~~ It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 8. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements

set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-401(3) [section 1]; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Section 9. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1)

Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
 - (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but
 - (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
- (l) cosmetologist's services and barber's services as ~~defined~~ *referred to* in 39-51-204(1)(e);
- (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;
- (n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(w) employment of a person who is working under an independent contractor exemption certificate.

~~(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a~~

~~member managed limited liability company who represents to the public that the person is an independent contractor. A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act unless the person has waived the rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana by obtaining an independent contractor exemption certificate from the department pursuant to [section 1].~~

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

~~(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.~~

~~(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

~~(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.~~

~~(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

~~(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.~~

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 10. Section 39-71-409, MCA, is amended to read:

"39-71-409. Waivers by employee invalid. ~~No~~ (1) An agreement by an employee to waive any rights under this chapter ~~for any injury to be received shall be~~ is not valid.

(2) (a) *A person who possesses and is working under a current independent contractor exemption certificate issued by the department waives all rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana unless the person elects coverage pursuant to 39-71-401(3)(b).*

(b) *A waiver by reason of an independent contractor exemption certificate is an exception to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in 1-3-204."*

Section 11. Section 39-71-415, MCA, is amended to read:

"39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee, ~~as defined in this chapter,~~ any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, ~~as defined in this chapter, and after mediating pursuant to department rule,~~ either party may, *after mediation pursuant to department rules,* petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) A dispute between an employer and the department involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution. A decision of the independent contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition ~~for mediation within 10 days of service of the decision. A party may petition the workers' compensation court for resolution of the dispute within 45 days of the mailing of the mediator's report with the workers' compensation court within 30 days of the mailing of the decision by the independent contractor central unit.~~ An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this part is a new proceeding.

~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."~~

Section 12. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Beneficiary" ~~is as defined~~ *has the meaning provided* in 39-71-116.
- (2) "Child" ~~is as defined~~ *has the meaning provided* in 39-71-116.
- (3) "Department" means the department of labor and industry.
- (4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement"; but they have no reference to "permanent partial disability".
- (5) "Employee" ~~is as defined~~ *has the meaning provided* in 39-71-118.
- (6) "Employer" ~~is as defined~~ *has the meaning provided* in 39-71-117.
- (7) "Independent contractor" ~~is as defined in 39-71-120~~ *means a person who is working under an independent contractor exemption certificate provided for in [section 1].*
- (8) "Insurer" is as defined in 39-71-116.
- (9) "Invalid" is as defined in 39-71-116.
- (10) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift.
(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.
- (11) "Order" is as defined in 39-71-116.
- (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~ *employment in coal mines.*
- (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules

of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116."

Section 13. Repealer. Sections 39-51-604 and 39-71-120, MCA, are repealed.

Section 14. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 through 3].

Section 15. Effective date — applicability. [This act] is effective on passage and approval and applies to all applications and renewals for the independent contractor exemption certificate submitted to the department after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 449

[SB 146]

AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; CHANGING THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS; AMENDING SECTIONS

2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4 and 6 through 14] may be cited as the “Montana Public Defender Act”.

Section 2. Definitions. As used in [sections 1 through 4 and 6 through 14], the following definitions apply:

(1) “Commission” means the public defender commission established in [section 5].

(2) “Court” means the supreme court, a district court, a youth court, a justice’s court, a municipal court, or a city court.

(3) “Indigent” means that a person has been determined under the provisions of [section 14] to be indigent and financially unable to retain private counsel.

(4) “Office” means the office of state public defender established in [section 7].

(5) “Public defender” means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of [sections 1 through 4 and 6 through 14].

(6) “Statewide public defender system”, “state system”, or “system” means the system of public defender services established pursuant to [sections 1 through 4 and 6 through 14].

Section 3. Purpose. The purposes of [sections 1 through 4 and 6 through 14] are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; and

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

Section 4. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which must deliver public defender services in all courts in

this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in [section 11], establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in [section 3].

(3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4 and 6 through 14] in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to [section 14], as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in [section 15];

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in [section 15];

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a

prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of [section 12] to provide public defender services under [sections 1 through 4 and 6 through 14] may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

Section 5. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of [sections 1 through 4 and 6 through 14] or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission and chief public defender shall hire their own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(b) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in [section 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members.

Section 6. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14], the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of [sections 1 through 4 and 6 through 14]; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission or the chief public defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

- (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;
- (g) the total number of persons represented by the office, identified by region, court, and case type;
- (h) the annual caseload and workload of each public defender, identified by region, court, and case type;
- (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
- (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and
- (k) detailed expenditure data by court and case type.

Section 7. Office of state public defender — personnel — compensation — expenses. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of [sections 1 through 4 and 6 through 14], including but not limited to:

- (a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:
 - (i) an administrative director, who must be experienced in business management and contract management;
 - (ii) a chief appellate defender;
 - (iii) a chief contract manager to oversee and enforce the contracting program;
 - (iv) a training coordinator, appointed as provided in [section 10];
 - (v) deputy public defenders, as provided in [section 11]; and
- (b) assistant public defenders; and
- (c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) Beginning July 1, 2006, the following expenses are payable by the office if the expense is incurred at the request of a public defender:

- (a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in [section 13].

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

Section 8. Chief public defender — duties. In addition to the duties provided in [section 7], the chief public defender shall:

(1) act as secretary to the commission and provide administrative staff support to the commission;

(2) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to [sections 1 through 4 and 6 through 14];

(3) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;

(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(5) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(6) establish administrative management procedures for regional offices;

(7) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

(8) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(9) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

(10) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(11) maintain a minimum client caseload, as determined by the commission;

(12) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

(13) perform all other duties assigned by the commission pursuant to [sections 1 through 4 and 6 through 14].

Section 9. Office of appellate defender — chief appellate defender.

(1) There is within the office an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of [section 8(7)] and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in [section 12] and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender.

Section 10. Training program — coordinator. (1) There is within the office a position of training coordinator for public defenders.

(2) The chief public defender shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and

(f) perform other duties assigned by the chief public defender.

Section 11. Regional offices — deputy public defenders — office space. (1) Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to [section 4(2)].

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of [section 8(7)];

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in [section 12] and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.

Section 12. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) Beginning July 1, 2006, the state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

(3) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(4) Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(5) The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

Section 13. Public defender account. (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Beginning July 1, 2006, money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant the Montana Youth Court Act; and

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104.

Section 14. Eligibility — determination of indigence — rules. (1) (a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court.

(2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section.

Section 15. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child, youth, or guardian ad litem involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) Beginning July 1, 2006, the court's action pursuant to subsection (2) must be to order the office of state public defender, provided for in [section 7], to immediately assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], pending a determination of eligibility pursuant to [section 14].

Section 16. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) *chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the employees in the positions listed in [section 7(3)(a)], who are appointed by the chief public defender.*

Section 17. Section 3-5-511, MCA, is amended to read:

“3-5-511. Procedure in reference to witnesses’ Witnesses’ warrants — state reimbursement. (1) The witnesses in criminal actions, *witnesses called by a public defender, as defined in [section 2], and witnesses called in a grand jury proceeding* shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due *pursuant to Title 26, chapter 2, part 5, and 46-15-116.*

(3) The state shall reimburse the clerk for the amount specified in the warrant as ~~provided in 3-5-901 and 3-5-902~~ follows:

(a) *if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or*

(b) *if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in [section 7].”*

Section 18. Section 3-5-604, MCA, is amended to read:

“3-5-604. Court reporters — transcript of proceedings — costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party’s attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, *except as otherwise provided in this section.*

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the *state office of court administrator* as provided in 3-5-901.

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter’s actual cost of preparation may be paid by the county or the office of the attorney general.

~~(4)~~(c) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(d) In civil cases, all transcripts required by the county must be furnished, and only the reporter’s actual costs of preparation may be paid by the county.

~~(5)(4)~~ (a) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript a public defender, as defined in [section 2], requests a transcript, ~~it the transcript~~ must be furnished to the party public defender and paid for by the state office of public defender, as provided in ~~3-5-901~~ [section 7].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901."

Section 19. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program *under the judicial branch*. Under this program, the ~~state office of court administrator~~ shall fund ~~all~~ all district court costs, except as provided in subsection ~~(4)~~ (3). These costs include ~~but are not limited to~~ but are not limited to the following:

- (a) salaries and benefits for:
 - (i) district court judges;
 - (ii) law clerks;
 - (iii) court reporters, as provided in 3-5-601;
 - (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and
 - (v) other employees of the district court;
- (b) in criminal cases:
 - (i) fees for transcripts of proceedings, as provided in 3-5-604, ~~expenses for indigent defense that are paid under contract or at an hourly rate, and expenses for psychiatric examinations;~~
 - (ii) witness fees and necessary expenses, as provided in 46-15-116;
 - (iii) juror fees and necessary expenses;
 - (iv) for a psychiatric evaluation under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4)(a)(i) and (4)(a)(iii); and
 - (v) for a psychiatric evaluation under 46-14-221, the cost of the examination and other associated expenses, as provided in 46-14-221(5);
- (c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;
- (d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:
 - (i) transcript fees;
 - (ii) witness fees; and
 - (iii) expenses for psychiatric examinations;
- (e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a

youth, or termination of the parent-child legal relationship and permanent custody:

- (i) transcript fees;
- (ii) witness fees;
- (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;
- (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and
- (v) expenses associated with court-ordered alternative dispute resolution;
- ~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;~~
- (f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before a grand jury;*
- (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);
- (h) except as provided in [section 7(5)], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;*
- (i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, ~~but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125; and~~
- (j) costs *associated with the operation and maintenance* of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5, ~~and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125.~~
- ~~(2) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund and directly pay the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~
- ~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1)~~
- (2) If a cost is not paid directly by the office of court administrator, the state county shall pay the cost and the office of court administrator shall reimburse counties, the county within 30 days of receipt of a claim, for the following:*
 - ~~(a) in district court criminal cases:~~
 - ~~(i) expenses for indigent defense that are not paid under subsection (1)(b);~~
 - (ii) juror fees and necessary expenses; and
 - (iii) witness fees and necessary expenses as provided in 46-15-116;
 - ~~(b) in proceedings under subsection (1)(e):~~

- ~~(i) expenses for appointed counsel for the youth; and~~
- ~~(ii) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and~~
- ~~(c) costs of juror and witness fees and witness expenses before a grand jury.~~
- ~~(4)(3)~~ For the purposes of subsection (1), district court costs *paid by the office of court administrator* do not include:
 - ~~(a) one-half of the salaries of county attorneys;~~
 - ~~(b) salaries of deputy county attorneys;~~
 - ~~(c) salaries of employees and expenses of the offices of county attorneys;~~
 - ~~(d)(a)~~ costs for clerks of district court and employees and expenses of the offices of the clerks of district court;
 - ~~(e)(b)~~ costs of providing and maintaining district court office space; or
 - ~~(f)(c)~~ charges incurred against a county by virtue of any provision of Title 7 or 46.”

Section 20. Section 7-6-2426, MCA, is amended to read:

“7-6-2426. Enumeration of county charges. (1) The following are county charges:

- (a) charges incurred against the county by virtue of any provision of this title;
 - (b) one-half of the salary of the county attorney and all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);
 - (c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;
 - (d) the board of prisoners confined in jail;
 - (e) the accounts of the coroner of the county for services that are provided by law;
 - (f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;
 - (g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;
 - (h) the contingent expenses necessarily incurred for the use and benefit of the county;
 - (i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.
- (2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid ~~by the department of corrections~~ as provided in 53-30-110.”

Section 21. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection, *as adjusted pursuant to*

subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat taxes and fees pursuant to:
 - (i) Title 23, chapter 2, part 5;
 - (ii) Title 23, chapter 2, part 6;
 - (iii) Title 23, chapter 2, part 8;
 - (iv) 61-3-317;
 - (v) 61-3-321;
 - (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
 - (vii) Title 61, chapter 3, part 7;
 - (viii) 5% of the fees collected under 61-10-122;
 - (ix) 61-10-130;
 - (x) 61-10-148; and
 - (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
- (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
- (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- (i) late filing fees pursuant to 61-3-220;
- (j) title and registration fees pursuant to 61-3-203;
- (k) veterans' cemetery license plate fees pursuant to 61-3-459;
- (l) county personalized license plate fees pursuant to 61-3-406;
- (m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year ~~2004~~ 2007 to determine the fiscal year ~~2004~~ 2007 entitlement share pool ~~payments~~, the department shall ~~add to subtract from~~ the fiscal year ~~2003~~ 2006 entitlement share pool ~~payments~~ the fiscal year 2003 amount of revenue actually distributed to the county from ~~the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)~~ following amounts:

<i>Beaverhead</i>	\$6,972
<i>Big Horn</i>	\$52,551
<i>Blaine</i>	\$13,625
<i>Broadwater</i>	\$2,564
<i>Carbon</i>	\$11,537
<i>Carter</i>	\$407
<i>Cascade</i>	\$157,151
<i>Chouteau</i>	\$3,536
<i>Custer</i>	\$7,011
<i>Daniels</i>	\$143
<i>Dawson</i>	\$3,893
<i>Fallon</i>	\$1,803
<i>Fergus</i>	\$9,324
<i>Flathead</i>	\$33,655
<i>Gallatin</i>	\$222,029

1583	MONTANA SESSION LAWS 2005	Ch. 449
<i>Garfield</i>		\$91
<i>Glacier</i>		\$3,035
<i>Golden Valley</i>		\$2,282
<i>Granite</i>		\$4,554
<i>Hill</i>		\$31,740
<i>Jefferson</i>		\$5,700
<i>Judith Basin</i>		\$1,487
<i>Lake</i>		\$38,314
<i>Lewis and Clark</i>		\$247,886
<i>Liberty</i>		\$152
<i>Lincoln</i>		\$3,759
<i>Madison</i>		\$8,805
<i>McCone</i>		\$1,651
<i>Meagher</i>		\$2,722
<i>Mineral</i>		\$2,361
<i>Missoula</i>		\$172,600
<i>Musselshell</i>		\$23,275
<i>Park</i>		\$6,582
<i>Petroleum</i>		\$36
<i>Phillips</i>		\$653
<i>Pondera</i>		\$10,270
<i>Powder River</i>		\$848
<i>Powell</i>		\$5,146
<i>Prairie</i>		\$717
<i>Ravalli</i>		\$93,090
<i>Richland</i>		\$3,833
<i>Roosevelt</i>		\$9,526
<i>Rosebud</i>		\$19,971
<i>Sanders</i>		\$30,712
<i>Sheridan</i>		\$271
<i>Stillwater</i>		\$12,117
<i>Sweet Grass</i>		\$2,463
<i>Teton</i>		\$5,560
<i>Toole</i>		\$7,113
<i>Treasure</i>		\$54
<i>Valley</i>		\$6,899
<i>Wheatland</i>		\$918
<i>Wibaux</i>		\$72
<i>Yellowstone</i>		\$266,644

Ch. 449	MONTANA SESSION LAWS 2005	1584
<i>Anaconda-Deer Lodge</i>		\$20,707
<i>Butte-Silver Bow</i>		\$53,057
<i>Alberton</i>		\$675
<i>Bainville</i>		\$258
<i>Baker</i>		\$2,828
<i>Bearcreek</i>		\$143
<i>Belgrade</i>		\$11,704
<i>Belt</i>		\$1,056
<i>Big Sandy</i>		\$1,130
<i>Big Timber</i>		\$2,910
<i>Billings</i>		\$163,499
<i>Boulder</i>		\$2,340
<i>Bozeman</i>		\$52,805
<i>Bridger</i>		\$1,303
<i>Broadus</i>		\$766
<i>Broadview</i>		\$258
<i>Brockton</i>		\$414
<i>Browning</i>		\$1,830
<i>Cascade</i>		\$1,374
<i>Chester</i>		\$1,430
<i>Chinook</i>		\$2,275
<i>Choteau</i>		\$3,050
<i>Circle</i>		\$1,018
<i>Clyde Park</i>		\$572
<i>Colstrip</i>		\$4,090
<i>Columbia Falls</i>		6,805
<i>Columbus</i>		\$3,245
<i>Conrad</i>		\$4,562
<i>Culbertson</i>		\$1,216
<i>Cut Bank</i>		\$5,316
<i>Darby</i>		\$1,348
<i>Deer Lodge</i>		\$5,708
<i>Denton</i>		\$503
<i>Dillon</i>		\$6,928
<i>Dodson</i>		\$194
<i>Drummond</i>		\$561
<i>Dutton</i>		\$661
<i>East Helena</i>		\$2,888
<i>Ekalaka</i>		\$689

<i>Ennis</i>	\$1,518
<i>Eureka</i>	\$1,733
<i>Fairfield</i>	\$1,120
<i>Fairview</i>	\$1,152
<i>Flaxville</i>	\$143
<i>Forsyth</i>	\$3,286
<i>Fort Benton</i>	\$2,579
<i>Fort Peck</i>	\$393
<i>Froid</i>	\$328
<i>Fromberg</i>	\$855
<i>Geraldine</i>	\$457
<i>Glasgow</i>	\$5,361
<i>Glendive</i>	\$8,099
<i>Grass Range</i>	\$254
<i>Great Falls</i>	\$96,422
<i>Hamilton</i>	\$7,148
<i>Hardin</i>	\$5,920
<i>Harlem</i>	\$1,422
<i>Harlowton</i>	\$1,678
<i>Havre</i>	\$16,223
<i>Helena</i>	\$45,877
<i>Hingham</i>	\$263
<i>Hobson</i>	\$397
<i>Hot Springs</i>	\$912
<i>Hysham</i>	\$482
<i>Ismay</i>	\$43
<i>Joliet</i>	\$1,006
<i>Jordan</i>	\$606
<i>Judith Gap</i>	\$263
<i>Kalispell</i>	\$28,144
<i>Kevin</i>	\$304
<i>Laurel</i>	\$10,804
<i>Lavina</i>	\$361
<i>Lewistown</i>	\$10,170
<i>Libby</i>	\$4,475
<i>Lima</i>	\$397
<i>Livingston</i>	\$12,145
<i>Lodge Grass</i>	\$889
<i>Malta</i>	\$3,389

Ch. 449	MONTANA SESSION LAWS 2005	1586
<i>Manhattan</i>		\$2,485
<i>Medicine Lake</i>		\$410
<i>Melstone</i>		\$234
<i>Miles City</i>		\$14,152
<i>Missoula</i>		\$104,264
<i>Moore</i>		\$319
<i>Nashua</i>		\$536
<i>Neihart</i>		\$149
<i>Opheim</i>		\$180
<i>Outlook</i>		\$125
<i>Philipsburg</i>		\$1,612
<i>Pinesdale</i>		\$1,413
<i>Plains</i>		\$2,007
<i>Plentywood</i>		\$3,185
<i>Plevna</i>		\$225
<i>Polson</i>		\$7,722
<i>Poplar</i>		\$1,544
<i>Red Lodge</i>		\$3,903
<i>Rexford</i>		\$263
<i>Richey</i>		\$309
<i>Ronan</i>		\$3,262
<i>Roundup</i>		\$3,280
<i>Ryegate</i>		\$465
<i>Saco</i>		\$354
<i>Scobey</i>		\$1,798
<i>Shelby</i>		\$5,677
<i>Sheridan</i>		\$1,150
<i>Sidney</i>		\$7,747
<i>Stanford</i>		\$737
<i>Stevensville</i>		\$3,063
<i>St. Ignatius</i>		\$1,367
<i>Sunburst</i>		\$709
<i>Superior</i>		\$1,521
<i>Terry</i>		\$1,011
<i>Thompson Falls</i>		\$2,272
<i>Three Forks</i>		\$3,130
<i>Townsend</i>		\$3,286
<i>Troy</i>		\$1,654
<i>Twin Bridges</i>		\$695

<i>Valier</i>	\$817
<i>Virginia City</i>	\$223
<i>Walkerville</i>	\$1,183
<i>West Yellowstone</i>	\$2,083
<i>Westby</i>	\$263
<i>White Sulphur</i>	\$1,734
<i>Whitefish</i>	\$9,932
<i>Whitehall</i>	\$1,889
<i>Wibaux</i>	\$893
<i>Winifred</i>	\$259
<i>Winnett</i>	\$314
<i>Wolf Point</i>	\$4,497.

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ *The* entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the

revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001.~~

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ *The* growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$4,812~~
~~Silver Bow~~	~~Ramsay Industrial~~	~~597,594;~~

~~(ii) for fiscal years 2004 and 2005:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$2,406~~
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~~Silver Bow~~ ~~Ramsay Industrial~~ ~~298,797; and~~

(iii) \$0 for all succeeding fiscal years.

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

~~(9)~~(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)~~(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 22. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or

services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(8) *This chapter does not apply to contracting under [section 12] of the Montana Public Defender Act.*

Section 23. Section 26-2-501, MCA, is amended to read:

“26-2-501. Witnesses in courts of record and before certain court officers. (1) ~~Witness~~ Except as provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, \$10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, ~~no~~ *an* officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana ~~shall~~ *may not* receive any per diem when testifying in a criminal proceeding, and ~~no~~ *a* witness ~~shall~~ *may not* receive fees in ~~any~~ more than one criminal case on the same day.”

Section 24. Section 26-2-506, MCA, is amended to read:

“26-2-506. Fees paid by party subpoenaing in civil actions — exceptions. ~~The~~ *(1) Except as provided in subsection (2),* fees and compensation of a witness in all *criminal and* civil actions must be paid by the party who caused ~~him~~ *the witness* to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in [section 2], the fees and expenses must be paid by the office of state public defender as provided in [section 7(5)].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in [section 2], but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901.”

Section 25. Section 26-2-508, MCA, is amended to read:

“26-2-508. Witnesses ~~on behalf of~~ for state, ~~or~~ county, or public defender — advance payment not required. The attorney general, ~~or~~ any county attorney, *or any public defender, as defined in [section 2],* is authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or county~~ without paying or tendering fees in advance to either officers or witnesses; ~~and any~~ *A* witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.”

Section 26. Section 26-2-510, MCA, is amended to read:

“26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 ~~shall~~ extend to all actions and proceedings brought in the name of the attorney general, ~~or~~ any other person or persons for the benefit of the state or county, *or any other person or persons for the benefit of a public defender, as defined in [section 2].*”

Section 27. Section 40-5-236, MCA, is amended to read:

“40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced

at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys ~~appointed~~ *assigned* under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 28. Section 40-6-119, MCA, is amended to read:

"40-6-119. Right to counsel — ~~payment of counsel fees and costs — free transcript on appeal.~~ (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall ~~appoint~~ *order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to assign* counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees ~~of counsel, for~~ experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. *Transcript fees must be paid as provided in 3-5-604(4).*"

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in

subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's ~~court-appointed~~ assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal

substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 30. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall ~~appoint~~ *immediately provide for the appointment or assignment of an attorney as provided for in [section 15]* to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to

appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

~~(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.~~

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in [section 15].

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, *pursuant to [section 15]*, to request the appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 31. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. ~~If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel must be appointed by the court at the time that a request is made for a determination under this subsection to represent the indigent parent in accordance with the provisions of [section 15].~~ A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 32. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless

otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel *and may be appointed or assigned counsel as provided for in [section 15]*. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment *or assignment* of counsel if indigent or if appointment *or assignment* of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 33. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — ~~right to counsel~~ — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.~~

~~(5)~~(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any *appointed or assigned* counsel requested by the *minor* parent.

~~(6)~~(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 34. Section 41-3-1010, MCA, is amended to read:

“41-3-1010. Review — scope — procedures — immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether caseworkers have diligently provided services;
- (iv) whether appropriate services have been available to the child and family on a timely basis; and
- (v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must take place at times set by the board. The time limit must comply with the Adoption and Safe Families Act of 1997.

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney *or the child's assigned attorney*, the guardian ad litem, the court-appointed ~~attorney~~ or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings.

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 35. Section 41-3-1012, MCA, is amended to read:

"41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney *or the child's assigned attorney*, the guardian ad litem, the court-appointed ~~attorney~~ *or* special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

(6) As used in this section, the following definitions apply:

(a) *"Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.*

(b) *"Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.*

(a)(c) *"Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.*

~~(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.~~

~~(c) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance."~~

Section 36. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. ~~The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:~~

(1) ~~reasonable compensation~~ *Compensation* for services and related expenses for counsel appointed by the court assigned for a party *must be paid by the office of state public defender provided for in [section 7].;*

(2) ~~the expenses of~~ *Expenses* for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other ~~like~~ *witness-related* expenses incurred in any proceeding under the Montana Youth Court Act *must be paid as provided for by law in 26-2-506.;*

(3) ~~reasonable~~ *Reasonable* compensation of a guardian ad litem appointed by the court *must be paid as provided for in 3-5-901.;* ~~and~~

(4) ~~cost of~~ *Costs* for transcripts and printing briefs ~~on appeal must be paid as provided for in 3-5-604."~~

Section 37. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel — assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained *for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel must be appointed for the youth if the parents or guardian and the youth are unable to provide counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], unless the right to appointed counsel is waived by the youth and the parents or*

guardian. Neither the youth nor the youth's parents or guardian may waive *the right to* counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 38. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent — separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) *If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in [section 7], to assign counsel to represent the minor parent.*"

Section 39. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign* counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 40. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel; and must be asked if the aid of counsel is desired.

(2) If the defendant desires *assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, is unable to employ counsel, and is entitled to have counsel assigned,* the court shall *order the office of state public defender, provided for in [section 7], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of [section 14].*

~~(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:~~

~~(a) the offense charged is a felony;~~

~~(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or~~

~~(c) the interests of justice would be served by assignment."~~

Section 41. Section 46-8-104, MCA, is amended to read:

“46-8-104. Appointment Assignment of counsel after trial. Any court of record may order *the office of state public defender, provided for in [section 7], to assign counsel, subject to the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he the defendant, petitioner, or appellant desires counsel and is unable to employ counsel.*”

Section 42. Section 46-8-113, MCA, is amended to read:

“46-8-113. Payment for court-appointed counsel by defendant for assigned counsel. (1) ~~The As part of or as a condition under a sentence imposed under the provisions of this title, the court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46 assigned to represent the defendant.~~

(2) ~~Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel office of state public defender, provided for in [section 7], for providing the defendant with counsel in the criminal proceeding.~~

(3) ~~The court may not sentence a defendant to pay the costs of court-appointed for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.~~

(4) ~~A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant’s immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.”~~

Section 43. Section 46-8-114, MCA, is amended to read:

“46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of ~~court-appointed assigned~~ counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the clerk of district court. ~~The clerk of district court shall forward the payments to the department of revenue for deposit in the state general fund office of state public defender, provided for in [section 7], and deposited in the account established in [section 13].”~~

Section 44. Section 46-8-115, MCA, is amended to read:

“46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of ~~court-appointed assigned~~ counsel defaults in payment of the costs or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant’s appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant’s part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) ~~The term of imprisonment for contempt for nonpayment of the costs of court-appointed assigned~~ counsel must be set forth in the judgment and may not

exceed 1 day for each \$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 45. Section 46-12-210, MCA, is amended to read:

"46-12-210. Advice to defendant. (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the following:

- (a) (i) the nature of the charge for which the plea is offered;
- (ii) the mandatory minimum penalty provided by law, if any;
- (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and
- (iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;
- (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, ~~one~~ *an attorney* will be ~~appointed~~ *assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],* to represent the defendant;
- (c) that the defendant has the right:
 - (i) to plead not guilty or to persist in that plea if it has already been made;
 - (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
 - (iii) to confront and cross-examine witnesses against the defendant; and
 - (iv) not to be compelled to reveal personally incriminating information;
- (d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;
- (e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and
- (f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 46. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) ~~The~~ The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

~~(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the state as provided in 3-5-901.~~

(4) (a) *The costs incurred for an examination ordered under subsection (2) must be paid as follows:*

(i) *if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;*

(ii) *if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;*

(iii) *if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.*

(b) *For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:*

(i) *the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to*

detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication.”

Section 47. Section 46-14-221, MCA, is amended to read:

“46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant’s fitness to proceed may be raised by the court, by the defendant or the defendant’s counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant’s counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician’s prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant’s fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ facility of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the ~~state office of court administrator~~ as a district court expense *as provided for in 3-5-901.*"

Section 48. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1)

The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of ~~the~~ a defendant *acting pro se* and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent *but is acting pro se and is not represented by a public defender, as defined in [section 2]*, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) *If the defendant is represented by a public defender, as defined in [section 2], witness costs must be paid by the office of state public defender as provided for in [section 7].*"

Section 49. Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title 26, chapter 2, part 5, *except as otherwise provided in this section.*

(2) The court, on motion by either party, may allow additional fees for expert witnesses.

~~(2)~~(3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses *for an indigent defendant not represented by a public defender, as defined in [section 2]*, and order the clerk of court to pay the expenses.

~~(3)~~(4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by ~~statutory enactment~~ *statute* required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(4)~~(5) The witness fees, costs, and expenses must be paid ~~by the state according to procedures required by the supreme court administrator under 3-5-902 as provided in 26-2-506.~~

Section 50. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],* hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 51. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of ~~court-appointed~~ assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 52. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232; or payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of ~~court-appointed~~ *assigned* counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 53. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign* counsel for a petitioner who

qualifies for the ~~appointment~~ assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, [sections 1 through 4 and 6 through 14].

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, *as defined in [section 2]*, and wishes to file a petition under this chapter, the court will ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of ~~appointed~~ assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) ~~appoint~~ order the office of state public defender to assign counsel to represent the person if *pending a determination by the court finds office of state public defender that the person is indigent, as defined in [section 2], and that the person either has accepted the offer of appointment assigned counsel or is unable to competently decide whether to accept the offer of appointed assigned counsel;*

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the court finds that the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment ~~appointment~~ of counsel.

(c) ~~The court may not appoint counsel~~ The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the ~~appointment~~ assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is *determined not to be indigent at the time that the court's determination is made under subsection (3)(b) but thereafter becomes indigent at any subsequent stage of the proceedings*, the court shall ~~appoint~~ order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid ~~as provided in 46-8-201~~ by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and

any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed.”

Section 54. Section 50-20-212, MCA, is amended to read:

“50-20-212. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person’s own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to ~~court-appointed~~ *assigned* counsel and shall ~~provide the petitioner with order the office of state public defender, provided for in [section 7], to assign~~ counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner’s initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.”

Section 55. Section 53-9-104, MCA, is amended to read:

“53-9-104. Powers and duties of office. (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to ~~pay the costs and attorney fees of court-appointed~~ *reimburse the office of state public defender, provided for in [section 7], for costs associated with providing assigned counsel* for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney ~~appointed~~ *assigned* for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant’s juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program.”

Section 56. Section 53-20-125, MCA, is amended to read:

“53-20-125. Outcome of screening — recommendation for commitment to residential facility — hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign* counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall ~~appoint~~ *order the office of state public defender to assign* counsel for the parents or guardian *pending a determination of indigence pursuant to [section 14]*.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

- (a) the respondent;
- (b) the respondent's parents, guardian, or next of kin, if known;
- (c) the responsible person;
- (d) the respondent's advocate, if any;
- (e) the county attorney;
- (f) the residential facility;
- (g) the attorney for the respondent, if any; and
- (h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health

and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team.”

Section 57. Section 53-21-112, MCA, is amended to read:

“53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor’s parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. ~~Counsel must be appointed for the minor at~~ *At the minor’s request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in [section 7], to assign counsel for the minor.”*

Section 58. Section 53-21-116, MCA, is amended to read:

“53-21-116. Right to be present at hearing or trial — appointment assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present *and the right to counsel* at any hearing or trial. If the person is indigent *or if in the court’s discretion assignment of counsel is in the best interest of justice*, the judge shall

~~appoint order the office of state public defender, provided for in [section 7], to immediately assign~~ counsel to represent the person at either the hearing or the trial, or both, ~~and the counsel must be compensated pursuant to 3-5-901(1)(f)."~~

Section 59. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment — filing of — initial hearing on.

(1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) ~~If a judge is available, the~~ The judge shall consider the petition, ~~and if. If the judge finds no probable cause, it the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in [section 7], to immediately assign~~ counsel ~~must be immediately appointed~~ for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent ~~and in the confirmation of the appointment of the attorney.~~

(3) If a judge is not available in the county *in person*, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. ~~If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in [section 7], to immediately provide assigned counsel. The judge, through the clerk of court, may also order~~ ~~must also direct~~ that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the ~~appointment~~ assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge. ~~The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."~~

Section 60. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics — rights. (1) A person may be committed to the custody of the department by the district court

upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless

sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitment under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have *assigned* counsel ~~appointed by the court or provided by the court pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]~~, if the person wants the assistance of counsel and is unable to obtain *private* counsel. If the court believes that the person needs the assistance of counsel, the court shall ~~require, by appointment if necessary, order the office of state public defender, provided for in [section 7], to assign~~ counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present.”

Section 61. Section 53-30-110, MCA, is amended to read:

“53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and or~~ whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner, ~~properly~~. *The statement must be certified by a district judge of the county.*

(2) The statement must be sent to the department of corrections for its approval. After ~~such~~ *the* approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) *Public defender costs, if any, must be paid pursuant to the Montana Public Defender Act provided for in [sections 1 through 4 and 6 through 14].”*

Section 62. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

- (d) that the person may not consume alcoholic beverages;
 - (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;
 - (f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;
 - (g) that the person submit to random or routine drug and alcohol testing; and
 - (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.
- (4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:
- (a) payment of a fine as provided in 46-18-231;
 - (b) payment of costs as provided in 46-18-232 and 46-18-233;
 - (c) payment of costs of ~~court-appointed~~ *assigned* counsel as provided in 46-8-113;
 - (d) community service;
 - (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
 - (f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).
- (5) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.
- (6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 63. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor ~~is to~~ *must* be given by the petitioner in the manner prescribed by 72-1-301 to:

- (a) the minor, if ~~he the minor~~ is 14 ~~or more~~ years of age *or older*;
 - (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
 - (c) any living parent of the minor.
- (2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the ~~interest~~ *interests* of the minor.
- (3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it the court may appoint an attorney~~ *order the office of state public defender, provided for in [section 7], to*

assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose."

Section 64. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 or more years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interest interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may ~~appoint an attorney order the office of state public defender, provided for in [section 7], to assign counsel under the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age."~~

Section 65. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in ~~his the incapacitated person's~~ welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of ~~his the person's~~ own choice or the court may, in the interest of justice, appoint an appropriate official or ~~attorney order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent him the person~~ in the proceeding. ~~The official or assigned counsel who shall have~~ has the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated ~~shall~~ must be examined by a physician appointed by the court who shall submit ~~his a~~ report in writing to the court and ~~must~~ be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he the person~~ will be detained or reside if the requested appointment is made and submit ~~his the visitor's~~ report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the

condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in ~~his~~ *the person's* affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon ~~his~~ *the person's* condition. ~~He~~ *The person* is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or ~~his~~ *the person's* counsel ~~so~~ requests it."

Section 66. Section 72-5-322, MCA, is amended to read:

"72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to ~~an appointment~~ *the assignment* of counsel, in accordance with the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

Section 67. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it the court may appoint an attorney order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court~~ *Counsel assigned* to represent a minor *also* has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of ~~his~~ *the person's* own choice, the court ~~must appoint a lawyer~~ *shall order the office of state public defender, provided for in [section 7], to assign counsel* to represent ~~him~~ *the person* pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]. *Assigned counsel* ~~who then~~ has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.”

Section 68. Implementation. (1) The governor shall appoint the members of the public defender commission established pursuant to [section 5] no later than July 1, 2005.

(2) The department of administration shall provide staff support to the commission beginning July 1, 2005, and continuing until the commission hires a chief public defender and until the chief public defender hires necessary staff for the commission and the office of state public defender.

(3) By December 31, 2005, the commission shall hire a chief public defender and issue any requests for proposals for consulting services and technical assistance that may be needed to help establish the office of state public defender provided in [section 7].

(4) Standards and procedures required to implement the provisions of [sections 1 through 4 and 6 through 14] must be established, and the office of state public defender must be opened by no later than July 1, 2006.

(5) During fiscal year 2006, a commission member is entitled to \$50 for each day that the member spends conducting the official business of the commission.

(6) The department of administration shall assist the commission in developing a public defender information technology system that utilizes existing resources as much as possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure that data required to effectively manage public defender caseloads and track costs can be efficiently collected and analyzed.

Section 69. Transition — transfer of county and city employees to state employment — rights. (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [section 7]. Transferred employees become state employees on July 1, 2006.

(2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].

(3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.

(4) An employee's compensation may not be reduced as the result of the transfer to the state classification plan.

(5) This section does not preserve the right of any former county or city employee to any salary or compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

(6) A transferred employee may elect to become a member of the state employee benefit plan beginning July 1, 2006, or remain on the employee's county or city benefit plan through the remainder of the plan year in effect on

June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(7) Accumulated sick and vacation leave and years of service with a county or city must be transferred fully to the state and become an obligation of the state on July 1, 2006. On January 1, 2007, and on January 1, 2008, the counties and cities with office of public defender employees who are transferred to state employment by this section shall pay the state 12.5% of the sick leave accrual and 50% of vacation leave accrual for each employee who is transferred to state employment. The transferred employees shall retain their accumulated sick and vacation leave. Any liability for accumulated compensatory time of employees who are transferred from county or city employment to state employment under this section is not transferred to the state and remains an obligation of the county or city that employed the employee prior to the transfer, subject to federal law and the county's or city's personnel policies.

(8) A transferred employee who is not already covered by the public employees' retirement system provided in Title 19, chapter 3, becomes a new member of the public employees' retirement system on July 1, 2006, and is subject to the provisions of Title 19, chapter 3.

(9) A collective bargaining agreement in effect on July 1, 2006, may not be construed as binding on the state. However, transferred employees are entitled to organize and collectively bargain pursuant to Title 39, chapter 31.

Section 70. Transition of appellate defender commission and office.

(1) The terms of members of the appellate defender commission established in 2-15-1020 terminate on June 30, 2006, when that section is repealed.

(2) Commission staff in the office of appellate defender established pursuant to the Appellate Defender Act in 46-8-210 through 46-8-213 must be officially transferred to the office of state public defender established pursuant to [section 7]. The transfer is effective July 1, 2006, at which time the position of chief appellate defender becomes exempt from the classification and pay plan pursuant to 2-18-103 and [section 7(3)(a)(ii)]. The compensation and benefits of the chief appellate defender and other staff of the office of appellate defender may not be reduced as a result of this transfer and the chief appellate defender and other staff of the office of appellate defender remain entitled to all compensation, rights, and benefits accrued as of June 30, 2006.

(3) The appellate defender commission and the public defender commission shall work together to provide that the duties and responsibilities of the appellate defender commission and the caseload of the staff of the office of appellate defender are transferred to the public defender commission and office of state public defender in a manner that ensures continuity of services. On July 1, 2006, all work of the appellate defender commission must officially be transferred to the supervision of the public defender commission and the chief public defender.

(4) Subject to the provisions of [section 5], a member of the appellate defender commission may be appointed by the governor to simultaneously serve on the public defender commission and the appellate defender commission until the appellate defender commission terminates pursuant to this section. A member serving on both commissions simultaneously is entitled to the compensation provided for the public defender commission in [section 68(5)] when engaged in the official duties of the public defender commission, provided

that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period of time.

Section 71. Rights to property. (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

(2) (a) An employee of a county or city public defender office who becomes a state employee under [section 69] retains the right to use all property relating to the functions of the office and being used by the employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the employee may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts to the county or city.

(3) This section does not apply to property owned by the federal government.

Section 72. Implementation — determination of actual costs — legislative audit — report. (1) The legislature's intent is to provide that:

(a) funding responsibilities for public defender services pursuant to [sections 1 through 4 and 6 through 14] will be shared by state and local government; and

(b) the counties, consolidated governments, and cities will pay their share of costs through a reduction in the county's, consolidated government's, or city's base entitlement share under 15-1-121.

(2) To fulfill the intent of subsection (1) for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County, an audit, by or at the direction of the legislative auditor, must be conducted on all actual costs for public defender services in district court and justice's court proceedings incurred from July 1, 1998, through June 30, 2004, for which records exist. The audit must separate the costs by expenditure category and distinguish between costs paid by a county and costs paid or reimbursed by the state.

(3) Each county audited under subsection (2) shall reimburse the legislative auditor for 50% of the cost of the audit for that county.

(4) By April 30, 2006, the results of the audit must be reported to the governor's budget office, the legislative audit committee, the legislative finance committee, and the law and justice interim committee.

(5) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that the base entitlement share for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties.

(6) (a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services in [this act] for the same time period.

(b) The results of the comparison must be presented to the governor, legislative finance committee, law and justice interim committee, and supreme court by September 1 of the following fiscal year.

(7) As used in this section:

(a) "actual costs" means all expenditures by a county for public defender services in justice court and all expenditures by a county for public defender services in district court that were not reimbursed by the office of court administrator pursuant to 3-5-901; and

(b) "public defender services" means all services and support associated with providing defendants in district court or justice court proceedings with assigned, appointed, or contracted attorneys, including:

(i) compensation;

(ii) personal expenses, including travel, meals, and lodging;

(iii) office operating costs, including rent, utilities, supplies, postage, copying, computer systems, and other office operating costs;

(iv) professional and paraprofessional support services, including services provided by investigators, paralegals, researchers, and secretaries;

(v) services required to support a defense, including transcripts, witnesses, and other support;

(vi) professional support, including professional education and training;

(vii) costs of psychiatric evaluations under 46-14-202 and 46-14-221, including the cost of examinations and other associated expenses; and

(viii) other services or support provided by the county to provide assigned, appointed, or contracted defense counsel in justice court and district court proceedings.

Section 73. Interim report. During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, legislative audit committee, and supreme court regarding the operation and administration of the statewide public defender system.

Section 74. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

Section 75. Codification instruction. (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 5].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

Section 76. Directions to code commissioner. Whenever references to court-appointed counsel, court-appointed attorney, appointed counsel, or appointed attorney appear in legislation enacted by the 2005 legislature, the code commissioner is directed to change the references to the appropriate references to assigned counsel or assigned attorney.

Section 77. Coordination instruction. If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void.

Section 78. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 79. Three-fifths vote required. Because 15-1-121(3)(a)(i), as amended in this bill, reduces the amount of entitlement share payments, 15-1-121(9), as amended in this bill, requires a vote of three-fifths of the members of each house of the legislature for passage of the amendment of 15-1-121.

Section 80. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 450

[SB 261]

AN ACT REVISING THE PROCEDURES FOR DECLARING A MANUFACTURED HOME TO BE AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; REVISING THE PROCEDURES FOR REVERSING THE DECLARATION THAT A MANUFACTURED HOME IS AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; AMENDING SECTIONS 15-1-116 AND 70-1-106, MCA; AND REPEALING SECTION 15-1-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-116, MCA, is amended to read:

“15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home ~~will~~ *must* be considered ~~for tax purposes~~ an improvement to real property *for tax purposes* if:

(a) the running gear is removed; ~~and~~

(b) the manufactured home is attached to a permanent foundation *so that it is no longer capable of being drawn over public highways and it is placed* on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, *it is placed on the land* with the permission of the landowner; *and*

(c) *a statement of intent declaring the manufactured home as an improvement to real property is recorded with the county clerk and recorder on a form furnished by the department of justice.*

(2) (a) To eliminate a manufacturer's certificate of origin properly assigned to an owner or a certificate of title of a manufactured home, an owner ~~may shall file record a~~ the statement of intent, *as provided in subsection (3) on a form furnished by the department of justice.*

(3)(b) The statement of intent must include:

(a)(i) the serial number of the manufactured home;

(b)(ii) the legal description of the real property to which the manufactured home has been permanently attached;

~~(c)(iii)~~ a description of any security interests in the manufactured home; ~~and~~

~~(d)(iv)~~ approval from all lienholders of the intent to eliminate the certificate of origin or certificate of title; *and*

(v) *an acknowledgment of the owner's signature.*

~~(4)(3)~~ (a) ~~The owner shall present the~~ owner shall record the statement of intent ~~to in the office of the county treasurer clerk and recorder of the county in which the manufactured home real property is located, and the owner shall surrender the certificate of origin or certificate of title and a certified copy of the recorded statement of intent to the county treasurer. Upon payment~~ Within 10 days of receipt of the fee required in 61-3-203, the county treasurer shall:

(i) enter the transfer of interest on the electronic record of title;

(ii) issue the owner a transaction summary receipt; and

(iii) forward ~~the~~ a certified copy of the statement of intent, a copy of the receipt for the fee required in 61-3-203, and the surrendered certificate of origin or certificate of title to the department of justice.

(b) *The department of justice shall provide the owner with a statement that is in a recordable form, which the owner shall record, that the process of surrendering the certificate of origin or certificate of title has been completed.*

~~(5)(c)~~ The county treasurer may not issue ~~the~~ a receipt for the fee referred to in subsection (3)(a) unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall remit the fee to the department for deposit in the state general fund.

~~(5)(4)~~ Upon the recording of the statement of intent *and the statement of title acceptance provided for in subsection (3)(b) and the receipt of surrender*, the manufactured home may not be physically removed without ~~the consent of all persons who have an interest in the manufactured home complying with the provisions of [section 2].~~

~~(6)(5)~~ A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and

by lending institutions in the same manner as any other residence that is classified as an improvement *to real property*.”

Section 2. Reversal of declaration that manufactured home is real property. (1) A manufactured home previously declared to be real property under the provisions of 15-1-116 must be considered as personal property for tax purposes if:

(a) the manufactured home is removed from its permanent foundation and running gear is attached so that it is capable of being moved over public highways; and

(b) the owner records a statement of reversal of declaration, on a form provided by the department of justice, with the county clerk and recorder of the county in which the manufactured home has been located and treated as real property.

(2) (a) In order to restore a certificate of title of a manufactured home, the owner shall file a statement of reversal of declaration as provided in subsection (3).

(b) The statement of reversal of declaration must include:

(i) the serial number of the manufactured home;

(ii) the legal description of the real property from which the manufactured home will be removed;

(iii) a description of any security interests in the manufactured home or real property from which it will be removed;

(iv) approval from all lienholders of the intent to restore the certificate of origin or certificate of title; and

(v) an acknowledgment of the owner's signature.

(3) (a) The statement of reversal of declaration must be presented to the county clerk and recorder of the county in which the manufactured home was treated as real property. The clerk and recorder shall forward a copy of the statement to the department of justice. The department of justice shall provide the owner with a restored certificate of origin or certificate of title.

(b) Within 5 days of receipt of the fee required in 61-3-203, the county treasurer shall:

(i) enter the transfer of interest on the electronic record of title;

(ii) issue the owner a transaction summary receipt; and

(iii) forward the statement of reversal of declaration to the department of justice.

(c) The county treasurer may not issue the transaction summary receipt unless all taxes, interest, and penalties on the real property have been paid.

(d) The department of justice shall provide to the owner a statement in recordable form, which the owner shall record, that the process of restoring the certificate of origin or certificate of title has been completed.

(4) A manufactured home may be physically removed from the real property on which it was located when it was treated as real property upon the owner's compliance with the provisions of subsections (1) through (3) and other applicable state law.

(5) A manufactured home that has been declared personal property in accordance with this section must be treated by the department and lending institutions in the same manner as any other residence that is classified as personal property.

Section 3. Section 70-1-106, MCA, is amended to read:

“70-1-106. Real property defined. Real or immovable property consists of:

- (1) land;
- (2) that which is affixed to land, *including a manufactured home declared an improvement to real property under 15-1-116*;
- (3) that which is incidental or appurtenant to land;
- (4) that which is immovable by law.”

Section 4. Repealer. Section 15-1-117, MCA, is repealed.

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 2].

Approved April 28, 2005

CHAPTER NO. 451

[SB 292]

AN ACT GENERALLY REVISING LOCAL GOVERNMENT AND STATE FINANCE LAWS; CHANGING THE START OF THE PERIOD TO CONTEST THE VALIDITY OF CERTAIN BONDS; CLARIFYING THE LAWS RELATING TO LOCAL GOVERNMENT ISSUANCE OF BOND OR GRANT ANTICIPATION NOTES; PROVIDING A BOND COMMENCEMENT DATE FOR CERTAIN BONDS; PROVIDING THAT CERTAIN REFUNDING BONDS NEED NOT BE SUBJECT TO REDEMPTION AFTER ONE-HALF OF THE BOND'S TERM; CLARIFYING THE TERM "SERIAL BONDS"; AUTHORIZING THE SUBMISSION OF BIDS ELECTRONICALLY AT A PUBLIC SALE OF BONDS; CLARIFYING THAT VARIABLE RATE REFUNDING BONDS MAY BE ISSUED BY A LOCAL GOVERNING BODY; CLARIFYING THE PROTEST PERIOD FOR RURAL SPECIAL IMPROVEMENT DISTRICTS; CLARIFYING THE ISSUANCE OF REFUNDING BONDS FOR SPECIAL IMPROVEMENT DISTRICTS; AUTHORIZING DELINQUENT WATER SERVICE CHARGES TO BECOME LIENS UPON THE PROPERTY SERVED OR TO BE COLLECTED AS A DEBT OF THE PROPERTY OWNER; CLARIFYING THE AUTHORITY OF CITIES TO ISSUE SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; CLARIFYING THE SECURITY OF BONDS FOLLOWING THE DISSOLUTION OF A COUNTY PARK DISTRICT; CLARIFYING THE MAXIMUM INTEREST RATE ON SPECIAL ASSESSMENTS SECURING BONDS; CLARIFYING THE AUTHORITY OF IRRIGATION DISTRICTS AND DRAINAGE DISTRICTS TO LEVY TAXES AND ASSESSMENTS; AUTHORIZING THE POOLING OF SPECIAL IMPROVEMENT DISTRICT BONDS AND SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; AMENDING SECTIONS 7-7-104, 7-7-109, 7-7-2206, 7-7-2207, 7-7-2211, 7-7-2304, 7-7-4206, 7-7-4210, 7-7-4304, 7-7-4502, 7-12-2113,

7-12-2193, 7-12-4194, 7-13-4309, 7-14-4109, 7-16-2443, 17-5-103, 20-9-408, 20-9-410, AND 20-9-464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-104, MCA, is amended to read:

“7-7-104. Limitation on action to test bond validity. ~~No~~ A local government general obligation bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, may *not* be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity ~~thereof of the bonds~~ is brought within 30 days after the date of ~~sale the adoption of the resolution calling for the sale of bonds of the local government.~~”

Section 2. Section 7-7-109, MCA, is amended to read:

“7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds. (1) As used in this section, the following definitions apply:

(a) “Bonds” means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) “Governing body” means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) “Political subdivision” means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) (a) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law ~~and~~ or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds ~~or has received a commitment from a person or entity to purchase bonds to aid in payment of costs incurred or to be incurred for the authorized purpose,~~ its governing body may by resolution issue and sell, ~~notes~~ in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized ~~and~~ *or the total amount of the loan or grant that is committed, notes* maturing within not more than 3 years from the date on which the notes are issued.

(b) The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment ~~for a grant, loan, or bond purchase for the purchase of the bonds or for the grant or loan~~ in an amount that *in the aggregate* is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) ~~(a) Any amount of the notes that cannot be paid at maturity from the proceeds of the grant, loan, or bond sale or from any other funds appropriated by the governing body for the purpose~~ *To the extent that proceeds described in subsection (3) are not sufficient to pay the notes and interest on those notes when due, the notes must be paid from any other funds that are legally available and appropriated by the governing body for that purpose.*

(b) If the notes are issued in anticipation of the issuance of bonds, any amount of the notes that cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a) must be paid from the proceeds of bonds to be issued and sold before the maturity date, or if

(c) If sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing as amortization bonds, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes.

(d) If notes are validly issued under then-applicable then-applicable law in anticipation of the issuance of bonds, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then-applicable then-applicable law concerning the principal amount of the bonds.

(e) If the notes are issued in anticipation of the receipt of a grant or other revenue source and cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a), the political subdivision may, to the extent otherwise authorized by law, issue bonds to provide for payment of those notes."

Section 3. Section 7-7-2206, MCA, is amended to read:

"7-7-2206. Term of general obligation bonds. (1) Bonds issued for any of the purposes designated in 7-7-2201(1) through (4) may not be for a longer term than 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2201(5) and (6) may not be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than 20 years.

(4) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the last-completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the payments are due.

(5) For purposes of 7-7-2207 and this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds."

Section 4. Section 7-7-2207, MCA, is amended to read:

“7-7-2207. Redemption of bonds. ~~All~~ *Other than refunding bonds, all* bonds issued for a longer term than 5 years ~~shall~~ *must* be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and ~~it shall be so~~ *the redemption option must be stated on the face of the bonds.*”

Section 5. Section 7-7-2211, MCA, is amended to read:

“7-7-2211. Serial bonds. The term “serial bonds”, as used in this part, means a bond issue payable in annual installments *of principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing *or subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 6. Section 7-7-2304, MCA, is amended to read:

“7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county. *Variable rate refunding bonds may also be issued if the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 7. Section 7-7-4206, MCA, is amended to read:

“7-7-4206. Redemption of bonds. ~~All~~ *Other than refunding bonds, all* bonds issued for a longer term than 5 years ~~shall~~ *must* be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and ~~it shall be so~~ *the redemption option must be recited in the bonds.*”

Section 8. Section 7-7-4210, MCA, is amended to read:

“7-7-4210. Serial bonds. The term “serial bonds”, as used in this part, means a bond issue payable in annual installments *of principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing *or subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 9. Section 7-7-4304, MCA, is amended to read:

“7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town. *Variable rate refunding bonds may also be issued if the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 10. Section 7-7-4502, MCA, is amended to read:

“7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds being refunded, computed to their respective stated maturity dates. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest

rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds being refunded if:

(a) they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of the new bonds upon the revenue of the undertaking must be junior and subordinate to the lien of the outstanding bonds being refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; ~~or~~

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality; *or*

(d) *the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*

Section 11. Section 7-12-2113, MCA, is amended to read:

“7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~therefore that is~~ introduced and passed by the board.

(2) The board ~~shall be deemed to have acquired~~ *has* jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when ~~no sufficient~~ protests have *not* been delivered to the county clerk within ~~15~~ 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest ~~shall have~~ *has* been found by ~~said~~ the board to be insufficient or ~~shall have~~ *has* been overruled; or

(c) when a protest against ~~the extending of~~ the proposed district ~~shall have~~ *has* been heard and denied.”

Section 12. Section 7-12-2193, MCA, is amended to read:

“7-12-2193. Refunding bonds. (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) *(i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded; or, if*

(ii) the refunding bonds are to bear interest at a variable rate and the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate; and the board determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the county or the board determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due

prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.”

Section 13. Section 7-12-4194, MCA, is amended to read:

“7-12-4194. Refunding bonds. (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) *(i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded; or, if*

(ii) the refunding bonds are to bear interest at a variable rate and the city council determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate, and the council determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the city or the council determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over

the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable that will not be satisfied by a loan from the revolving fund; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.”

Section 14. Section 7-13-4309, MCA, is amended to read:

“7-13-4309. Procedure to collect sewer or water charges. (1) Sewer or water charges must be collected by the treasurer.

(2) On or before July 7 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer *or water* service has been furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid within 30 days of the notice, the amount will be levied as a tax against the lot or parcel of real estate to which sewer *or water* service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), at the time that the annual tax levy is certified to the county clerk, the city treasurer or town clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer *or water* service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town."

Section 15. Section 7-14-4109, MCA, is amended to read:

"7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders ~~any such~~ a sidewalk, curb, or gutter constructed or ~~any such an~~ alley approach constructed or replaced, the order ~~shall must~~ be entered upon the minutes of the council and ~~shall must~~ name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After ~~the making of such~~ issuing an order, ~~the council shall provide a~~ written notice thereof shall be given to the owner or agent of the owner and to any purchaser under contract for deed of ~~such the~~ property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, ~~in such manner as the council may direct.~~

(4) If the owner or agent of the owner of ~~such~~ a lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of

the notice to cause ~~such~~ the sidewalk, curb, or gutter to be constructed or to cause ~~such~~ the alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost ~~thereof of those improvements~~, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which ~~the same is those improvements are~~ constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs ~~shall be as is~~ provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction ~~shall must~~ be made by special warrants or bonds in ~~such a form as may be that is~~ prescribed by ordinance or resolution and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, ~~as appropriate, and the~~ The council may provide for the payment of interest annually or semiannually. *Except as otherwise expressly provided in 7-14-4110 and this section, the warrants or bonds that the city council authorizes may be issued subject to the terms and security provisions provided in Title 7, chapter 12, parts 41 and 42.*

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate pursuant to 17-5-102.”

Section 16. Section 7-16-2443, MCA, is amended to read:

“7-16-2443. Effect of dissolution. (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy a fee on each household or a property tax on all taxable property that is in the territory formerly comprising the district in a sufficient amount to be used to discharge the debts of the former district.

(b) ~~If the electors of the district lowered the amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the levy authorized prior to the reduction of the levy for the discharge of the district's obligations if the obligations are bonds. If bonds of the district issued under 7-16-2433 are outstanding as of the date of dissolution of the district, the county governing body shall levy property taxes on all taxable property in the district to provide for the payment of the principal of and interest on those bonds in accordance with their terms and the terms of the resolution of the district authorizing the bonds.~~

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county.”

Section 17. Section 17-5-103, MCA, is amended to read:

“17-5-103. Rate of interest on special assessments determined by governing bodies — limitations. All special assessments levied by a political subdivision ~~shall must~~ bear interest at ~~such a rate or rates as its determined by the political subdivision’s governing body shall determine~~, except that ~~no such the rate shall may not~~ exceed the greater of 7% per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on ~~said the bonds plus an additional rate of interest, if any, on assessments authorized by statute to pay the principal and interest on those bonds.~~”

Section 18. Section 20-9-408, MCA, is amended to read:

“20-9-408. Definition of forms of bonds. As used in this part:

(1) “amortization bond” means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) “general obligation bonds” means bonds that pledge the full faith and credit and the taxing power of a school district;

(3) “impact aid revenue bonds” means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the account established in 20-9-514; and

(4) “serial bonds” means a bond issue payable in annual installments *of principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing *or subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 19. Section 20-9-410, MCA, is amended to read:

“20-9-410. Limitation of term and interest — timing for redemption.

(1) School district bonds may not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. ~~All Other than refunding or redeeming bonds, all~~ bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and ~~if the redemption option must be so~~ stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.”

Section 20. Section 20-9-464, MCA, is amended to read:

“20-9-464. Statute of limitations — action to test validity. ~~No~~ A bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, ~~shall may not~~ be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of ~~said the~~ bonds, unless an action to contest the validity ~~thereof shall be~~ of the bonds is brought within 30 days after the date of ~~sale the adoption of the resolution calling for the sale of bonds of the school district.”~~

Section 21. Electronic submission of bids. Any bid for the purchase of bonds to be submitted in writing or as a sealed bid may also be submitted by facsimile or other electronic transmission or through an electronic bidding system, as authorized by the governing body in the resolution authorizing the sale of the bonds.

Section 22. Pooling of special improvement district bonds and sidewalk, curb, gutter, or alley approach bonds. (1) If the city council determines by resolution that the pooling of bonds of one or more special improvement districts of the city with bonds issued to finance sidewalks, curbs, gutters, or alley approaches under 7-14-4109 will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the district or districts and those sidewalk, curb, gutter, or alley approach bonds combined in a single offering. These bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section must denote that bonds have been pooled and must refer to the numbers of the district or districts and the additional improvements to be financed. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district and a separate account for those additional improvements combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts or in respect of those improvements.

Section 23. Codification instruction. (1) [Section 21] is intended to be codified as an integral part of Title 17, chapter 5, part 1, and the provisions of Title 17, chapter 5, part 1, apply to [section 21].

(2) [Section 22] is intended to be codified as an integral part of Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 41, apply to [section 22].

Section 24. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 452

[SB 293]

AN ACT REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN

WHICH TAX CREDITS MAY BE PAID; REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN PERCENTAGE OF MONTANA PRODUCT IN ITS TOTAL PRODUCTION TO QUALIFY FOR THE TAX INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOLINE AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Required use of gasoline blended with ethanol. (1) Except as provided in [section 2] and subsection (5) of this section, within 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months, the department shall adopt standards and specifications pursuant to 82-15-103 that ensure that all gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets of this state must be blended with 10%, by volume, of agriculturally derived, denatured ethanol and may not contain more than trace amounts of the additive methyl tertiary butyl ether.

(2) Except as provided in [section 2] and subsection (5) of this section, 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months, a fuel retailer who sells gasoline to consumers to be used in their vehicles on the public highways, roads, and streets of this state may not accept gasoline for sale to consumers or sell gasoline to consumers that is not ethanol-blended as provided in subsection (1) or that contains the additive methyl tertiary butyl ether.

(3) Agriculturally denatured ethanol referred to in subsection (1) may be denatured only as specified in Title 27, parts 20 and 21, of the Code of Federal Regulations.

(4) The department of transportation shall compile a quarterly report certifying the amount of denatured ethanol that is produced in Montana.

(5) Once the production of 40 million gallons of denatured ethanol has been certified and the provisions of subsections (1) and (2) apply, if the production of denatured ethanol drops below 20 million gallons on an annualized basis, the provisions of this section do not apply.

Section 2. Exemptions from use of ethanol-blended gasoline. (1) Gasoline that is not ethanol-blended as required in [section 1] may be sold or dispensed at a public or private racecourse if the gasoline is intended to be used exclusively as a fuel for off-highway motor sports racing events.

(2) Gasoline retailers and wholesale bulk distributors shall hold, store, import, transfer, and offer for sale or use nonethanol-blended unleaded premium grade gasoline with an antiknock index number of 91 or greater.

(3) Aviation fuel is not subject to an ethanol blending requirement.

Section 3. Section 15-70-201, MCA, is amended to read:

~~“15-70-201. (Temporary) Definitions.~~ As used in this part, ~~unless the context requires otherwise, the following definitions apply:~~

~~(1) “Agricultural use” means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) “Aviation dealer” means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

~~(3) “Aviation fuel” means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

~~(4) “Bulk delivery” means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) “Distributed” means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6) “Distributor” means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

~~(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.~~

15-70-201. (Effective on occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means ~~a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10" a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15 70 201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.~~ As used in this part, unless the context requires otherwise, the following definitions apply:

(1) ~~“Agricultural use” means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

(2) ~~“Aviation dealer” means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

(3) ~~“Aviation fuel” means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

(4) ~~“Bulk delivery” means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

(5) ~~(a) “Distributed” means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor’s license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

(6) ~~“Distributor” means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

(7) ~~“Export” means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."~~

Section 4. Section 15-70-204, MCA, is amended to read:

~~"15-70-204. (Temporary) Gasoline license tax — rate.~~ (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

~~(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and~~

~~(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.~~

~~(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning the date that the requirement for use of gasohol contained in [section 1] occurs, gasohol is subject to the tax imposed in subsection (1)(b). (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

~~**15-70-204. (Effective July 1 of fourth year following date of occurrence of contingency) Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:~~

~~(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and~~

~~(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.~~

~~(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."~~

Section 5. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.

(4)(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 6. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol — ~~written plan required — reservation of incentives —~~ rules. (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

- (i) is to be blended with gasoline for sale as gasohol in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as gasohol; or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. ~~Beginning July 1, 2010, there is no tax incentive. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.~~

(3) Regardless of the alcohol tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase; and

(c) an alcohol distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce alcohol at the facility in the first year of production;

(ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;

(iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;

(iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce alcohol at the facility in the sixth year of production.

(4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an alcohol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of alcohol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

~~(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:~~

~~(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;~~

~~(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and~~

~~(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.~~

~~(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:~~

~~(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;~~

~~(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and~~

~~(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.~~

~~(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments.~~

~~(8)~~(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall

respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of ~~subsection~~ subsections (2) and (4).

~~*(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.*~~

~~*(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9).*~~

~~*(11)*~~*(7) The department shall prescribe rules necessary to carry out the provisions of this section within 1 year of [the effective date of this act]. The department shall coordinate and request information and input from the alcohol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."*

Section 7. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the

additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) *A Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.*

(b) A business enterprise for the production of alcohol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 8. Section 82-15-101, MCA, is amended to read:

"82-15-101. Definitions. As used in this part, the following definitions apply:

(1) *"Antiknock index number" means the octane rating of the antiknock characteristics of a grade or type of motor fuel determined as provided in 16 CFR 306.0.*

~~(1)~~(2) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

~~(2)~~(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3)~~(4) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

~~(4)~~(5) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

~~(5)~~(6) "Liquefied petroleum product container" means a container approved by the American society of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.

~~(6)~~(7) "Mislabelled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

~~(7)~~(8) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

(8)(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(9)(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3) (4).

(10)(11) "Sell" and "sale" includes barter and exchange."

Section 9. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part — rules. (1) ~~This~~ *Except as provided in subsection (2), this part shall must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.*

(2) *Section 82-15-110(8) must be enforced by the department of environmental quality.*

(3) *The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:*

(a) *a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).*

(b) *reasonable sampling and reporting requirements; and*

(c) *requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."*

Section 10. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, ~~shall must~~ be determined by the department and, *subject to the provisions of [section 1(1)], shall must* be based upon nationally recognized standards and specifications such as *those that* are published from time to time by the American society for testing materials. ~~When so determined by the~~ *The standards and specifications adopted by rule by the department and adopted as rules, such standards and specifications are the standards and specifications for such those products sold in this state and official tests of such those products shall must be based upon them the adopted standards and specifications."*

Section 11. Section 82-15-104, MCA, is amended to read:

“82-15-104. ~~Department~~ *Departments authorized to employ laboratory for testing.* The department ~~and, when testing for methyl tertiary butyl ether, the department of environmental quality~~ may employ a laboratory ~~having that has~~ sufficient facilities to make tests of petroleum products as required and ~~may~~ pay reasonable compensation for the analyses and tests made by ~~it the~~ laboratory.”

Section 12. Section 82-15-106, MCA, is amended to read:

“82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after ~~a hearing noticed for which~~ *notice was provided* for not less than 10 days. Violation of any provision of this part, ~~except 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license.~~ The suspension, revocation, or refusal may be conditioned on ~~those terms which that~~ the department considers ~~just and proper~~ *appropriate*.”

Section 13. Section 82-15-110, MCA, is amended to read:

“82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same the~~ *meter or mechanical device* has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department’s seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device ~~which that~~ has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the ~~commodities fuel product meets~~ in all respects ~~meet~~ the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product ~~which that~~ is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended; or

(8) *import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a).*”

Section 14. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether — notice requirements — hearing — penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant

to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the order of the department of environmental quality.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred.

Section 15. Section 82-15-111, MCA, is amended to read:

“82-15-111. Penalty for violations. A person who *purposely, knowingly, or negligently* violates any of the provisions of this part, *except 82-15-110(8)*, or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.”

Section 16. Section 12, Chapter 568, Laws of 2001, is amended to read:

“Section 12. Contingent effective date. ~~[This act]~~ *is [Sections 5 through 10] are* effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with.”

Section 17. Section 13, Chapter 568, Laws of 2001, is amended to read:

“**Section 13. Contingent termination.** ~~[This act] terminates [Sections 5 through 10]~~ terminate June 30 of the fourth year following [the effective date of this act].”

Section 18. Repealer. Section 15-70-245, MCA, is repealed.

Section 19. Codification instruction. [Sections 1, 2, and 14] are intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [sections 1, 2, and 14].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Contingent termination. (1) Subject to subsection (2), [sections 1 and 2] and the amendments to 15-70-204 terminate 5 years after the production level provided for in [section 1] is met.

(2) If, after the 40-million-gallon production requirement of [section 1] is met, the production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis, [sections 1 and 2] and the amendments to 15-70-204 are terminated.

(3) The department of transportation shall inform the code commissioner of the date that the production level provided for in [section 1] is met.

(4) The department of transportation shall inform the code commissioner if production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis once the production requirement of 40 million gallons provided for in [section 1] has been met.

Approved April 28, 2005

CHAPTER NO. 453

[SB 301]

AN ACT REVISING THE LAWS GOVERNING LOCAL GOVERNMENT MILL LEVIES; ALLOWING LOCAL GOVERNMENTS TO IMPOSE MILL LEVIES FOR PUBLIC OR GOVERNMENTAL PURPOSES RATHER THAN FOR STATUTORILY ENUMERATED PURPOSES; REMOVING RESTRICTIONS ON THE COUNTY ALL-PURPOSE LEVY; REMOVING CERTAIN REFERENCES TO MAXIMUM MILL LEVIES; CHANGING THE CONTENTS OF THE PROPERTY TAX NOTICE; AMENDING SECTIONS 7-1-2103, 7-1-4123, 7-6-2501, 7-6-2521, 7-6-2522, 7-6-2524, 7-6-4401, 7-6-4421, 7-7-4104, 7-13-144, 7-13-3027, 7-21-3410, 15-16-101, 15-16-117, 22-1-304, 50-2-111, 53-21-1010, 67-10-402, AND 81-8-504, MCA; REPEALING SECTIONS 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, AND 50-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2103, MCA, is amended to read:

“**7-1-2103. County powers.** A county has power to:

- (1) sue and be sued;
- (2) purchase and hold lands within its limits;
- (3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (4) make orders for the disposition or use of its property that the interests of its inhabitants require;
- (5) subject to 15-10-420, levy and collect taxes for ~~the public or governmental~~ purposes, *as described in [section 7]*, under its exclusive jurisdiction ~~that are authorized unless prohibited by law.~~

Section 2. Section 7-1-4123, MCA, is amended to read:

“7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

- (1) preserve peace and order and secure freedom from dangerous or noxious activities;
- (2) secure and promote the general public health and welfare;
- (3) provide any service or perform any function authorized or required by state law;
- (4) exercise any power granted by state law;
- (5) subject to 15-10-420, levy any tax authorized by state law *for public or governmental purposes as described in [section 7]*;
- (6) appropriate public funds;
- (7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;
- (8) grant franchises; and
- (9) provide for its own organization and the management of its affairs.”

Section 3. Section 7-6-2501, MCA, is amended to read:

“7-6-2501. Authorization for county mill levy. Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county *public or governmental* purposes that is necessary to defray current expenses and may levy taxes that are required to be levied by special or local statutes.”

Section 4. Section 7-6-2521, MCA, is amended to read:

“7-6-2521. All-purpose levy authorized for counties. A county may at its option levy an all-purpose levy as provided in ~~7-6-2521 through 7-6-2522 and 7-6-2524 and 7-6-2526.~~

Section 5. Section 7-6-2522, MCA, is amended to read:

“7-6-2522. All-purpose levy. ~~(1) Subject to 15-10-420, the all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county *public or governmental* purposes in lieu of the levies specified in 7-6-2523.~~

~~(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget.”~~

Section 6. Section 7-6-2524, MCA, is amended to read:

“7-6-2524. Changes from all-purpose levy. A county adopting the all-purpose levy provided for in 7-6-2521 ~~through and 7-6-2522 7-6-2524 and 7-6-2526~~ is bound by that adoption during the ensuing fiscal year but may abandon the method in succeeding fiscal years.”

Section 7. County taxation — purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in 7-11-1106;
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, or collection of exhibits as provided in 7-16-2205;
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
- (13) weed control and management purposes as provided in 7-22-2142;
- (14) insect control programs as provided in 7-22-2306;
- (15) fire control as provided in 7-33-2209;
- (16) ambulance service as provided in 7-34-102;
- (17) public health purposes as provided in 50-2-111 and 50-2-114;
- (18) public assistance purposes as provided in 53-3-115;
- (19) indigent assistance purposes as provided in 53-3-116;
- (20) developmental disabilities facilities as provided in 53-20-208;
- (21) mental health services as provided in 53-21-1010;
- (22) airport and landing field purposes as provided in 67-10-402 and 67-11-302;
- (23) purebred livestock shows and sales as provided in 81-8-504; and

(24) economic development purposes as provided in 90-5-112.

Section 8. Section 7-6-4401, MCA, is amended to read:

“7-6-4401. General taxing power of municipalities. Subject to 15-10-420, the city or town council may levy and collect taxes for general and special *public or governmental* purposes on all property within the city or town subject to taxation under the laws of the state.”

Section 9. Section 7-6-4421, MCA, is amended to read:

“7-6-4421. Authorization for tax levy and collection by municipality. (1) Subject to 15-10-420, the council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county *public or governmental* purposes and may by ordinance provide for the levy and collection of the taxes.

(2) Until the passage of the ordinance, the levy and collection of municipal taxes are and the proceedings for those purposes must be as provided in this part.”

Section 10. Section 7-7-4104, MCA, is amended to read:

“7-7-4104. Incurrence of certain general obligations. (1) A municipality may enter into or incur an obligation for any *public or governmental* purpose ~~authorized by law~~, including the purposes set forth in 7-7-4101. An obligation may be in the form of bonded indebtedness, note indebtedness, a lease, a lease-purchase agreement, an installment purchase contract, or other legal form. An obligation constitutes a general obligation of the municipality but is not secured by a pledge of the taxing power of the municipality.

(2) The obligation provided for in subsection (1) may be authorized by a resolution adopted by the governing body of the municipality. The resolution must establish the terms, covenants, and conditions of the obligation. It is not necessary to submit the question of incurring the obligation to the electors of the municipality. The obligation may be incurred or sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The obligation does not constitute indebtedness for the purpose of statutory debt limitations.

(3) An obligation may be issued only if:

(a) the principal amount of the obligation does not exceed 10% of the general fund budget of the municipality in each of the 2 immediately preceding fiscal years;

(b) at the time the obligation is to be incurred, the debt services in the current or in any future fiscal year on the obligation and any other outstanding obligation issued pursuant to this section do not exceed 2% of the revenue deposited in the general fund of the municipality in each of the 2 immediately preceding fiscal years; and

(c) the term of the obligation does not exceed 20 years.

(4) The obligation must clearly state that it is not secured by a pledge of the municipality's taxing power but that it is payable solely from revenue in the general fund in any fiscal year that is pledged to the payment of the obligation.

(5) In order to secure the payment of principal of or interest on an obligation and related charges, the municipality may grant a first lien on all revenue collected and deposited in the general fund subject to or on a parity with any

prior pledges. The municipality may establish other funds and accounts for obligations issued under this section that may be necessary to provide for the priority and segregation of revenue deposited in the general fund and pledged to the payment of obligations. For purposes of this section, related charges include the fees and expenses of registrars and paying agents and the amounts, if any, that must be rebated to the federal government under 26 U.S.C. 148.

(6) All obligations incurred under this section are legal and valid obligations of the municipality issuing the obligations, and the general credit of the municipality is irrevocably pledged for the prompt payment of both the principal of and interest on the obligations as they become due. However, the municipality may not be obligated to levy taxes for the payment of any obligation or interest on the obligation.

(7) The powers conferred on a municipality by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with provisions of any other general, special, or local law, the provisions of this section are controlling."

Section 11. Section 7-13-144, MCA, is amended to read:

"7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners ~~shall have authority may~~, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) ~~to~~ fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year; to provide income and ~~revenues~~ *revenue* adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) ~~to~~ fix and establish an additional charge; for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) ~~to subject to 15-10-420~~, levy and ~~to~~ assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements ~~thereon on the parcel or lot~~ in the district, ~~not in excess of 2 mills on each dollar of taxable valuation~~, in order to provide sufficient ~~revenues~~ *revenue* for the reserve fund of ~~the amounts in an amount~~ necessary to meet the financial requirements of ~~such the~~ fund as described in 7-13-151 through 7-13-156."

Section 12. Section 7-13-3027, MCA, is amended to read:

"7-13-3027. Resolution to establish service charges — hearing — limitations and tax levy. The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and ~~revenues~~ *revenue* adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) ~~subject to 15-10-420~~, levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, ~~not in excess of 2 mills on each dollar of taxable valuation~~; to provide sufficient ~~revenues~~ *revenue* for the reserve fund in ~~the amounts~~ *an amount* necessary to meet the financial requirements of the fund as described in 7-13-3034 through 7-13-3039."

Section 13. Section 7-21-3410, MCA, is amended to read:

“7-21-3410. Funding of county fair activities. (1) The board of county commissioners may appropriate annually, out of the general fund of the county treasury and to the county fair commission, ~~a sum not to exceed \$3,500; funds~~ to be expended by the county fair commission for the purpose of holding a county fair or junior fair and for advertising the products and resources of the county.

(2) Subject to 15-10-420 and in addition to or in lieu of the appropriation provided for in subsection (1), the county commissioners may levy an ad valorem tax ~~of 1 1/2 mills or less~~ on each dollar of taxable property in the county for the purpose of securing, equipping, maintaining, and operating a county fair or a junior fair, including the purchase of land and the erection of buildings and other appurtenances as may be necessary.

(3) The funds derived from the appropriation or tax levy must be kept in a separate fund by the county treasurer and must be paid out by the treasurer on order signed by the president and secretary of the fair commission.”

Section 14. Section 15-16-101, MCA, is amended to read:

“15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

~~(iii) the value of each mill in that county;~~

~~(iv)~~(iii) itemized city services and special improvement district assessments collected by the county;

~~(v)~~(iv) the number of the school district in which the property is located; and

~~(vi)~~(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection ~~(2)(a)(iv)~~ (2)(a)(iii) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.”

Section 15. Section 15-16-117, MCA, is amended to read:

“15-16-117. Personal property — treasurer’s duty to collect certain taxes. (1) The county treasurer shall demand payment of road taxes, authorized by 7-14-2206 or 7-14-2501 through ~~7-14-2504~~ 7-14-2503, from each person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) Subject to 15-10-420, these taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.”

Section 16. Section 22-1-304, MCA, is amended to read:

“22-1-304. Tax levy — special library fund — bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election, as provided in 15-10-425, the question of imposing the mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

~~(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 and 7-6-4453.~~

~~(4)~~(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

~~(5)~~(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

~~(6)~~(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.”

Section 17. Section 50-2-111, MCA, is amended to read:

“50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county’s part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40.

(c) Each participating city’s part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county’s part of the total expenses is financed by a levy on the taxable value of all taxable property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40. If the levy is not sufficient to fund the county’s share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city’s part of the total expenses is financed by a levy on the taxable value of all taxable property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

~~(e) The levies authorized by this subsection (2) are in addition to all other levies authorized by law.”~~

Section 18. Section 53-21-1010, MCA, is amended to read:

“53-21-1010. (Effective July 1, 2005) County commissioners — community mental health centers — licensed mental health centers. (1) The county commissioners in each of the counties in the region or service area that are designated as participating counties pursuant to subsection (4) may

appoint, upon request, a person from their respective county to serve as a representative of the county on a community mental health center board or other licensed mental health center board.

(2) A community mental health center board or other licensed mental health center board may establish a recommended proportionate level of financial participation for each of the counties within the region for the provision of mental health services within the limits of financial participation authorized by this section.

(3) Prior to June 10 of each year, the board of a community mental health center or other licensed mental health center may submit an annual budget to the board of county commissioners of each of the counties within their mental health region or service area, specifying each county's recommended proportionate share.

(4) If a board of county commissioners includes in the county budget the county's proportionate share of the community mental health center or other licensed mental health center board's budget, the county must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. Subject to 15-10-420, if the general fund is insufficient to meet the approved budget, a levy may be made on the taxable valuation of the county ~~in addition to all other taxes allowed by law to be levied on that property.~~

(5) Each board of county commissioners, after determining the amount of county general fund money to be used for mental health services, may contract with a community mental health center or another licensed mental health center or provider for mental health services in the county."

Section 19. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, ~~in addition to the annual levy for general administrative purposes or the all-purpose mill levy authorized by 7-6-4451,~~ a tax on the taxable value of all taxable property in the county, city, or town for airports and landing fields and for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the city or town council or councils involved shall determine in advance the levy necessary for those purposes and the proportion that each political subdivision joining in the venture is required to pay.

(3) If the levy is insufficient for the purposes enumerated in subsection (1), the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods periodically is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety.”

Section 20. Section 81-8-504, MCA, is amended to read:

“81-8-504. Tax levy authorized. For the purpose of defraying the costs of purebred livestock shows and purebred livestock sales, the county commissioners may, subject to 15-10-420, levy a tax on the taxable value of all taxable property in the county, ~~in excess of the amount levied for county purposes.~~ The taxes must be paid into the general fund of the county.”

Section 21. Repealer. Sections 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, and 50-2-114, MCA, are repealed.

Section 22. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 7, chapter 6, part 25, and the provisions of Title 7, chapter 6, part 25, apply to [section 7].

Section 23. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 454

[SB 323]

AN ACT ALLOWING A 5-YEAR CARRYFORWARD OF THE INCOME AND CORPORATE TAX CREDIT FOR THE PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX; AMENDING SECTION 15-50-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-50-207, MCA, is amended to read:

“15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) (a) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(b) *The credit allowed under this subsection (1) may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 5 succeeding tax years. The entire amount of the credit not used in the year earned must be carried*

first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Approved April 28, 2005

CHAPTER NO. 455

[SB 340]

AN ACT ALLOWING THE CREDIT FOR GEOTHERMAL SYSTEMS INSTALLED IN RESIDENCES TO BE CLAIMED BY A PERSON CONSTRUCTING A RESIDENCE; ALLOWING THE CREDIT TO BE USED FOR CORPORATE LICENSE OR INCOME TAXES; AMENDING SECTION 15-32-115, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer *or a person constructing a new residence* who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling *or in a residence constructed by the taxpayer* is entitled to claim a tax credit against the taxpayer's tax liability under chapter 30 *or 31* for a portion of the installation costs of the system, not to exceed \$1,500. *Only one credit may be claimed for a residence.* The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 *or 31* for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year. *A credit is not allowed under this section for expenditures claimed as a deduction under 15-32-103.*

(2) For the purposes of this section, installation costs include the cost of:

- (a) trenching, well drilling, casing, and downhole heat exchangers;
- (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
- (c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Section 3. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Approved April 28, 2005

CHAPTER NO. 456

[SB 380]

AN ACT PROVIDING FOR REGULATION OF MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS APPLICABLE TO CARDS AND PERSONS WHO SUPPLY CARDS; SPECIFYING UNLAWFUL ACTS; PROVIDING A RIGHT TO RETURN AND REQUIRING NOTICE OF THE RIGHT TO RETURN MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; REQUIRING REGISTRATION OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING FINANCIAL RESPONSIBILITY OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; PROVIDING CERTAIN EXCEPTIONS, INCLUDING A WAIVER FOR PREFERRED PROVIDER ORGANIZATIONS; REQUIRING A CARD EDUCATION PROGRAM; PROHIBITING FRAUD CONCERNING CARDS; AMENDING SECTIONS 33-1-318, 33-1-1301, AND 33-1-1302, MCA; REPEALING SECTION 33-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-318, MCA, is amended to read:

“33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-107, 33-1-501, 33-1-1302, 33-14-201, chapters 2, 16 through 18, and 30 of this title, [sections 4 through 11], part 13 of chapter 20 of this title, or part 4 of chapter 25 of this title, or any rule or order issued under this code, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner’s receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or

writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearings examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must be issued within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 for each violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under this code."

Section 2. Section 33-1-1301, MCA, is amended to read:

"33-1-1301. Insurance, medical care discount card, pharmacy discount card, and securities fraud education and prevention program. (1) The commissioner may:

~~(1)~~(a) establish an insurance, *medical care discount card*, *pharmacy discount card*, and securities fraud education and prevention program; and

~~(2)~~(b) conduct investigations of insurance, *medical care discount card*, *pharmacy discount card*, and securities fraud.

(2) *As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5].*

Section 3. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, medical care discount card, and pharmacy discount card fraud — insurer. (1) A person commits the act of insurance, *medical care discount card*, or *pharmacy discount card* fraud when, in the course of offering or selling insurance, *a medical care discount card*, or *a pharmacy discount card*, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, *medical care discount card*, or *pharmacy discount card* fraud to make full restitution to

the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, ~~or~~ refund, *or other benefit* received by the victim from the insurance, *medical care discount card, or pharmacy discount card*.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds *or a medical care discount card fee* commits the offense of theft *and deceptive practices* and is punishable as provided in 45-6-301 *and 45-6-317*, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

(8) *As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5]."*

Section 4. Short title — purpose. (1) [Sections 4 through 11] may be cited as the "Montana Medical Care Discount Card and Pharmacy Discount Card Act".

(2) The purposes of [sections 4 through 11] are to regulate the promotion, offer, sale, and use of medical care discount cards and pharmacy discount cards and to facilitate the detection of and reduce the occurrence of medical care discount card and pharmacy discount card fraud.

Section 5. Definitions. As used in [sections 4 through 11], unless the context indicates otherwise, the following definitions apply:

(1) "Administrator" has the meaning provided for in 33-17-102(3).

(2) "Enroller" means a person who:

(a) solicits the purchase or renewal of a medical care discount card through that person;

(b) transmits, for consideration, from a supplier to another person or from another person to a supplier a contract or application for a medical care discount card or the renewal of a medical care discount card; or

(c) acts or aids in another manner in the delivery or negotiation of a medical care discount card or the renewal or continuance of a medical care discount card.

(3) "Health care provider" means:

(a) an individual licensed by the department of labor and industry to practice or who holds a temporary permit to practice a branch of the healing arts;

(b) a professional corporation organized pursuant to Title 35, chapter 4, by one or more individuals described in subsection (3)(a);

(c) a Montana limited liability company organized pursuant to Title 35, chapter 8, for the purpose of rendering professional services by individuals described in subsection (3)(a);

(d) a partnership of individuals described in subsection (3)(a);

(e) a Montana nonprofit corporation organized pursuant to Title 35, chapter 2, for the purpose of rendering professional health care services by one or more individuals described in subsection (3)(a); or

(f) a health care facility as defined in 50-5-101.

(4) "Health insurance issuer" means a health insurance issuer, as defined in 33-22-140, that is authorized to do business in this state and its affiliates, as defined in 33-2-1101.

(5) (a) "Medical care discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider.

(b) The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount.

(6) "Medical care discount card supplier" means a person engaged in selling or furnishing, either as principal or agent, for consideration, one or more medical care discount cards to another person or persons.

(7) "Network of health care providers" means two or more health care providers who are contractually obligated to provide services in accordance with the terms and conditions applicable to a medical care discount card.

(8) "Pharmacy discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for a consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount.

(9) "Pharmacy discount card supplier" means a person engaged in selling or furnishing, either as a principal or agent, for a consideration, one or more pharmacy discount cards to another person or persons.

(10) "Preferred provider organization company" means a company that contracts with health care providers for lower fees than those customarily charged by the health care provider for services and contracts with health insurance issuers, administrators, or self-insured employers to provide access to those lower fees to a particular group of insureds, subscribers, participants, beneficiaries, members, or claimants.

(11) "Prescription drug provider" means a pharmacy or other business that is contractually bound to provide a discount on one or more prescription drugs in conjunction with the use of a pharmacy discount card.

(12) "Service area" means the area within a 60-mile radius of the home or place of business of a medical care discount card user or pharmacy discount card user.

Section 6. Unlawful acts by medical care discount card suppliers or enrollers. (1) A medical care discount card supplier or an enroller that markets, promotes, advertises, or distributes a medical care discount card in Montana:

(a) may not make misleading, deceptive, or fraudulent representations regarding:

- (i) the discount or range of discounts offered by a medical care discount card;
- (ii) the access to any range of discounts offered by a medical care discount card; or
- (iii) another medical care service provided in connection with a medical care discount card;

(b) may not use terms or phrases commonly associated with insurance products that could lead a prospective purchaser or user of a medical care discount card to believe that the card being offered is comprised of one or more insurance products or is a substitute for insurance, despite disclaimers to the contrary by the medical care discount card supplier or enroller;

(c) shall provide to a prospective purchaser or user, before purchase, access to a list of health care providers, including the name, city, state, and provider type and, optionally, the address and telephone number of each health care provider in the prospective purchaser's or user's service area; and

(d) shall make continuously available to each medical care discount card user, through a toll-free telephone number, the internet, and in writing upon request, the name, address, telephone number, and provider type of all health care providers in the user's service area who are bound by contract to provide services in accordance with the terms and conditions applicable to the card.

(2) A medical care discount card supplier that markets, promotes, advertises, or distributes a medical care discount card in Montana shall:

(a) state, on all advertisements for medical care discount cards, in bold and prominent type of at least 14 points in size, and on all cards themselves in clear and conspicuous type, that the card is not insurance;

(b) designate and provide the commissioner with the name, address, and telephone number of a medical care discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 11] applicable to medical care discount cards and medical care discount card suppliers and enrollers; and

(c) ensure that if the medical care discount card supplier claims that a specific health care provider offers a discount in conjunction with the medical care discount card, that specific health care provider is contractually bound to provide that discount to the purchaser or user.

Section 7. Right to return or cancel medical care discount card or pharmacy discount card — notice — prohibited acts. (1) A medical care discount card or pharmacy discount card issued for delivery in this state is returnable or cancelable, within 30 days of the date of delivery of the card or a longer period if provided in the purchase agreement, by the purchaser or user for any reason, and the user must receive a full refund of all fees, except nominal fees associated with enrollment costs, that were part of the cost of the card.

(2) A medical care discount card supplier or pharmacy discount card supplier may not charge or collect a fee, including a cancellation fee, after a purchaser or user has returned a card to the supplier or given the supplier notice of the person's intention to return or cancel the card.

(3) A medical care discount card supplier or pharmacy discount card supplier shall ensure that each purchaser or user receives with the card a notice

stating the terms under which the medical care discount card or pharmacy discount card may be returned or cancelled as provided in subsections (1) and (2). A medical care discount card or pharmacy discount card returned or cancelled in accordance with this section is void from the date of purchase.

Section 8. Sale of medical care discount card by unregistered supplier prohibited — requirements for registration — list of authorized enrollers required — exceptions. (1) A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

(2) An application to the commissioner for a certificate of registration must be accompanied by a nonrefundable application fee of \$100. The commissioner shall issue the certificate unless the commissioner determines that the medical care discount card supplier or an officer or manager is not financially responsible, does not have adequate expertise or experience to operate a medical care discount card business, or is not of good character or that the supplier or its affiliates or a business formerly owned or managed by the supplier or an officer or manager of the supplier has had a previous application for a certificate of registration denied, revoked, suspended, or terminated for cause or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous 5 years.

(3) A medical care discount card supplier shall renew its certificate of registration annually. The certificate is renewed upon payment by the supplier of a nonrefundable renewal fee of \$100 and expires on the anniversary of its issuance if the renewal fee is not paid before that date. Once issued or renewed, the certificate continues in effect for 1 year unless suspended, revoked, or terminated. The commissioner shall deposit the fees required by this section with the state treasurer, to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the medical care discount card supplier has violated a provision of [sections 4 through 11], that the supplier is not financially responsible or competent or that the supplier or an affiliate or business formerly owned or managed by the supplier has had a certificate of registration denied or suspended for cause or has been found in violation of a statute or regulation in another jurisdiction.

(5) A medical care discount card supplier that violates the provisions of subsection (1) is subject to a civil penalty of not less than \$5,000 or more than \$25,000 for each violation. Each day of violation is considered to be a separate violation.

(6) A medical care discount card supplier that is a health insurance issuer is not required to obtain a certificate of registration in accordance with this section, except that affiliates, as defined in 33-2-1101, that are selling medical care discount cards in Montana shall obtain a certificate of registration.

(7) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is not required to obtain a certificate of registration pursuant to this section.

(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner by that date. A person commencing business as a

supplier after October 1, 2005, shall file a certificate of registration and its list of authorized enrollers with the commissioner at least 30 days before commencing business as a supplier. After the initial filing of a list of its enrollers with the commissioner, a supplier shall file an updated list annually.

(9) This section does not excuse a medical care discount card supplier that is also an insurer from full compliance with the Montana Insurance Code.

Section 9. Medical care discount card supplier financial responsibility requirements — claims against bonds or accounts — exemptions. (1) A person intending to act as a medical care discount card supplier may not market, promote, advertise, or distribute a medical care discount card in this state until the person has purchased a bond or established a surety account and filed with the commissioner a copy of a bond or a statement identifying a surety account depository as provided in this section.

(2) A person intending to act as a medical care discount card supplier shall:

(a) purchase and maintain a surety bond in the amount of \$50,000 issued by a surety company authorized to do business in this state; or

(b) establish and maintain a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association, or federal savings bank located in this state.

(3) A person intending to act as a medical care discount card supplier shall provide the depository, trustee, and account number of the surety account to the commissioner and shall annually provide to the commissioner proof of renewal of the bond or maintenance of the surety account. The person shall pay a nonrefundable filing fee of \$250 with the initial filing and with each subsequent filing.

(4) A medical care discount card supplier shall maintain the surety account or bond until 2 years after the date that the supplier ceases operations in the state. Money from a surety account may not be released to the supplier without the written consent of the commissioner.

(5) A surety on a medical care discount card company bond may not cancel a bond required by this section without giving at least 21 days' written notice of cancellation to the medical care discount card supplier and the commissioner. If the commissioner receives notice of a surety's intention to cancel a supplier's bond, the commissioner shall notify the affected supplier that, unless the supplier files another \$50,000 surety bond with the commissioner or establishes a \$50,000 surety account on or before the date the bond is to be cancelled, the supplier may no longer do business as a supplier in this state.

(6) A bond surety shall write a bond required by this section and a person intending to act as a medical care discount card supplier shall establish an account in favor of a person, and the commissioner for the benefit of a person, injured by a violation of [sections 4 through 11]. The bond surety shall also write the bond to cover any fines levied against the supplier, a supplier's enroller, or both, for a violation of [sections 4 through 11] occurring during the time the supplier's bond is in effect.

(7) A person with a claim against a medical care discount card supplier's bond or surety account for a violation of a provision of [sections 4 through 11] may maintain an action against the supplier and against either the bond surety or the trustee of the surety account, as appropriate. The aggregate liability of the surety or trustee to a person injured by a violation of [sections 4 through 11] may not exceed the amount of the surety bond or account.

(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file with the commissioner a copy of a surety bond or statement identifying a surety account depository on that date. A person commencing business as a supplier after October 1, 2005, shall file a copy of a bond or statement with the commissioner at least 30 days before commencing business as a supplier.

(9) A health insurance issuer that is also a medical care discount card supplier is exempt from the requirements of this section.

(10) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is exempt from the requirements of this section.

Section 10. Waiver of registration and bonding requirements. The commissioner may waive the requirements of [sections 8 and 9] for any preferred provider organization company. The factors taken into account in granting a waiver include but are not limited to whether the company:

- (1) has contracts in place with health care providers residing in this state;
- (2) has contracts in place with users and purchasers of health care services residing in this state who use the medical care discount card in conjunction with a self-funded or fully insured health plan;
- (3) is primarily in the preferred provider organization business or primarily in the medical care discount card supplier business; and
- (4) was in business in this state prior to [the effective date of the act].

Section 11. Pharmacy discount card supplier requirements. (1) A pharmacy discount card supplier that sells, markets, promotes, or distributes, for a consideration, a pharmacy discount card in Montana:

- (a) shall clearly and conspicuously disclose on all advertising, marketing materials, and enrollment materials that discounts offered through the use of a pharmacy discount card are not insurance and are not intended as a substitute for insurance;
- (b) shall clearly and conspicuously disclose on all pharmacy discount cards that discounts offered through the use of the pharmacy discount card are not insurance;
- (c) shall disclose, when a pharmacy discount card is sold in combination with a group limited supplemental insurance policy, that discounts offered through the use of the pharmacy discount card are not insurance;
- (d) may not, in the advertising or offering of the pharmacy discount card, use terms or phrases commonly associated only with insurance products that could lead a prospective purchaser or user of the card to believe that the pharmacy discount card is comprised of insurance products or is a substitute for insurance, despite disclaimers to the contrary by the pharmacy discount card supplier;
- (e) shall ensure that each prescription drug provider claimed by the pharmacy discount card supplier to offer a discount in conjunction with the pharmacy discount card is contractually bound to provide that discount to the purchaser or user;
- (f) may not make misleading, deceptive, or fraudulent representations regarding a discount or range of discounts available through the use of a pharmacy discount card;

(g) shall provide to each prospective purchaser or user prior to purchase reasonable access to a list of the benefits and services provided through the use of a pharmacy discount card;

(h) shall provide a prospective purchaser or user prior to purchase access to a list of any prescription drug providers in the prospective purchaser's or user's service area;

(i) shall disclose in all enrollment materials that a pharmacy discount card purchaser or user has 30 days to cancel a pharmacy discount card as provided in [section 7];

(j) shall make available to each pharmacy discount card user continuously after purchase of a pharmacy discount card, through a toll-free telephone number, the internet, and in writing upon request, the name, address, and telephone number of each prescription drug provider in the user's service area, including mail order prescription drug providers, that are bound by contract to offer prescription drugs in accordance with the terms and conditions of the pharmacy discount card; and

(k) shall designate and provide the commissioner with the name, address, and telephone number of a pharmacy discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 11] applicable to pharmacy discount cards and pharmacy discount card suppliers.

(2) A person violating the provisions of subsection (1) is subject to the fine provided for in 33-1-317.

Section 12. Repealer. Section 33-1-107, MCA, is repealed.

Section 13. Codification instruction. [Sections 4 through 11] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 4 through 11].

Section 14. Applicability. [Sections 4 through 11] apply to a person acting or intending to act as a medical care discount card supplier or enroller, a person acting or intending to act as a pharmacy discount card supplier, a medical care discount card issued, or a pharmacy discount card issued on and after October 1, 2005.

Approved April 28, 2005

CHAPTER NO. 457

[SB 415]

AN ACT CREATING THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS; PROVIDING A GRADUATED RENEWABLE ENERGY STANDARD; AUTHORIZING ADMINISTRATIVE PENALTIES; PROVIDING A WAIVER PROCESS FOR PUBLIC UTILITIES; ESTABLISHING A PROCUREMENT PROCESS; AUTHORIZING ADVANCE APPROVAL OF CERTAIN PROCUREMENT CONTRACTS BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE SUBMISSION OF PROCUREMENT PLANS; AUTHORIZING THE COMMISSION TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS ACT; PROVIDING THE COMMISSION WITH RULEMAKING

AUTHORITY; EXEMPTING COOPERATIVE UTILITIES FROM THE GRADUATED RENEWABLE ENERGY STANDARD; REQUIRING CERTAIN COOPERATIVE UTILITIES TO IMPLEMENT AND ENFORCE THEIR OWN RENEWABLE ENERGY STANDARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the “Montana Renewable Power Production and Rural Economic Development Act”.

Section 2. Findings. The legislature finds that:

- (1) Montana is blessed with an abundance of diverse renewable energy resources;
- (2) renewable energy production promotes sustainable rural economic development by creating new jobs and stimulating business and economic activity in local communities across Montana;
- (3) increased use of renewable energy will enhance Montana’s energy self-sufficiency and independence; and
- (4) fuel diversity, economic, and environmental benefits from renewable energy production accrue to the public at large, and therefore all consumers and utilities should support expanded development of these resources to meet the state’s electricity demand and stabilize electricity prices.

Section 3. Definitions. As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

- (1) “Ancillary services” means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.
- (2) “Common ownership” means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ among the two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.
- (3) “Community renewable energy project” means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.
- (4) “Compliance year” means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with [sections 1 through 8] must be demonstrated.
- (5) “Cooperative utility” means:
 - (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
 - (b) an existing municipal electric utility as of May 2, 1997.
- (6) “Eligible renewable resource” means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

- (a) wind;
 - (b) solar;
 - (c) geothermal;
 - (d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;
 - (e) landfill or farm-based methane gas;
 - (f) gas produced during the treatment of wastewater;
 - (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
 - (h) hydrogen derived from any of the sources in this subsection (6) for use in fuel cells; and
 - (i) the renewable energy fraction from the sources identified in subsections (6)(a) through (6)(h) of electricity production from a multiple-fuel process with fossil fuels.
- (7) “Local owners” means:
- (a) Montana residents or entities composed of Montana residents;
 - (b) Montana small businesses;
 - (c) Montana nonprofit organizations;
 - (d) Montana-based tribal councils;
 - (e) Montana political subdivisions or local governments;
 - (f) Montana-based cooperatives other than cooperative utilities; or
 - (g) any combination of the individuals or entities listed in subsections (7)(a) through (7)(f).
- (8) “Public utility” means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility’s successors or assignees.
- (9) “Renewable energy credit” means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.
- (10) “Total calculated nameplate capacity” means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:
- (a) located within 5 miles of the project;
 - (b) constructed within the same 12-month period; and
 - (c) under common ownership.

Section 4. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in subsection (11) and [section 7], a graduated renewable energy standard is established for public utilities as provided in subsections (2) through (4).

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility shall, for any given compliance year, calculate its procurement requirement based on the public utility's previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility may not resell renewable energy credits and count those sold credits against the public utility's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(4) may not be applied against a public utility's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in [sections 1 through 8] limits a public utility from exceeding the standards established in subsections (2) through (4).

(9) If a public utility exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsection (11), if a public utility is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility has undertaken all reasonable steps to mitigate the reliability concerns.

Section 5. Procurement — cost recovery — reporting. (1) In meeting the requirements of [sections 1 through 8], a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in [section 4].

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of [sections 1 through 8] are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in [sections 1 through 8] limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the

public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

- (a) January 1, 2007, for the standard required in [section 4(2)];
- (b) June 1, 2008, for the standard required in [section 4(3)];
- (c) June 1, 2013, for the standard required in [section 4(4)]; and
- (d) any additional future dates as required by the commission.

(6) A public utility shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with [sections 1 through 8] for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

Section 6. Commission authority — rulemaking authority. (1) The commission has the authority to generally implement and enforce the provisions of [sections 1 through 8].

(2) The commission shall adopt rules before June 1, 2006, to:

- (a) select a renewable energy credit tracking system to verify compliance with [sections 1 through 8];
- (b) establish a system by which renewable resources become certified as eligible renewable resources;
- (c) define the process by which waivers from full compliance with [sections 1 through 8] may be granted;
- (d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;
- (e) define the requirements governing renewable energy procurement plans and annual reports; and
- (f) generally implement and enforce the provisions of [sections 1 through 8].

Section 7. Cost caps. (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

(2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the renewable resource does not exceed by more than 15% the cost of power from any other alternate generating resource available to the public utility.

Section 8. Cooperative utility — exemption — standard. (1) A cooperative utility is exempt from the graduated renewable energy standard established in [section 4].

(2) Each governing body of a cooperative utility that has 5,000 or more customers is responsible for implementing and enforcing a renewable energy standard for that cooperative utility that recognizes the intent of the legislature

to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, and financial resources.

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 8].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 458

[SB 507]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; PROVIDING DEFINITIONS; CLARIFYING THE ISSUING OF CERTIFICATES OF TITLE, REGISTRATION, AND LICENSE PLATE REQUIREMENTS FOR STREET RODS, SPECIALLY CONSTRUCTED VEHICLES, KIT VEHICLES, AND CUSTOM VEHICLES; AUTHORIZING CERTAIN CUSTOM VEHICLES AND STREET RODS NOT USED FOR GENERAL TRANSPORTATION PURPOSES TO DISPLAY ONLY A REAR LICENSE PLATE UPON PAYMENT OF A FEE; AMENDING SECTIONS 61-3-301, 61-3-411, 61-9-204, 61-9-407, AND 61-9-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(2) "Kit vehicle" is a motor vehicle assembled from a manufactured kit, either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(3) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(4) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(5) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

Section 2. Certificate of title — custom vehicle, street rod, kit vehicle, or specially constructed vehicle. (1) When a person applies for a certificate of title for a custom vehicle or street rod and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must provide:

(a) the model year and year of manufacture of the body of the vehicle that the custom vehicle or street rod resembles as the model year and year of manufacture for the custom vehicle or street rod;

(b) a vehicle description of the custom vehicle or street rod if the vehicle is a custom vehicle built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year or a street rod built to resemble a vehicle manufactured before 1949; and

(c) if there is no manufacturer's certificate of origin for the custom vehicle or street rod, the vehicle identification number from the chassis or frame of the custom vehicle or street rod or a state-assigned vehicle identification number.

(2) When a person applies for a certificate of title for a kit vehicle, excluding a kit vehicle that qualifies as a custom vehicle or street rod, and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must list:

(a) the model year and year of manufacture as contained on the manufacturer's certificate of origin for the kit vehicle or, if a manufacturer's certificate of origin does not exist, the calendar year in which application for title was made;

(b) a vehicle description of the kit vehicle; and

(c) in absence of a manufacturer's certificate of origin for the kit vehicle, the vehicle identification number from the chassis or frame of the donor vehicle or a state-assigned vehicle identification number.

(3) When a person applies for a certificate of title for a specially constructed vehicle and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must list:

(a) the model year and year of manufacture as the calendar year in which application for title was made;

(b) a vehicle description, as determined by the department, of the assembled or custom-built vehicle; and

(c) the vehicle identification number, if any, from the chassis or frame of the vehicle or a state-assigned vehicle identification number.

(4) Prior to assignment of a state-assigned vehicle identification number or to confirm a vehicle identification number from the chassis or frame of a custom vehicle, street rod, or specially constructed vehicle, the department may require a vehicle inspection.

Section 3. Registration — custom vehicle, street rod, kit vehicle, or specially constructed vehicle. (1) (a) A custom vehicle or street rod:

(i) that is more than 30 years old may be registered under 61-3-411 as a collector's item; or

(ii) may be registered, depending on the vehicle type, as a motor home, a bus, a truck having a manufacturer's rated capacity of more than 1 ton, a truck tractor, or a light vehicle upon payment of the registration fee required in 61-3-321, the applicable fee or fee in lieu of tax provided for in 61-3-522, 61-3-529, or 61-3-560 through 61-3-562, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) The owner of a custom vehicle or street rod that is originally registered under subsection (1)(a) or that was registered prior to January 1, 2006, may be authorized to operate the custom vehicle or street rod while displaying only one license plate on the rear exterior of the vehicle if the owner certifies that the custom vehicle or street rod is not used for general transportation purposes and pays an additional \$10 fee, to be deposited in the state general fund.

(c) (i) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(i), either a set of pioneer or vintage license plates, as described in 61-3-411(2), or a set of original Montana license plates, as allowed under 61-3-412(1), must be assigned and issued to the custom vehicle or street rod.

(ii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and unless the owner has applied for personalized license plates, special license plates for military personnel, veterans, or spouses, collegiate plates, or generic specialty license plates or has met the requirements of subsection (1)(b), a set of standard license plates must be assigned to the vehicle under 61-3-331.

(iii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and if the owner of a custom vehicle or street rod has met the requirements of subsection (1)(b), a single license plate, including a personalized standard license plate, special license plate for military personnel, veterans, or spouses, collegiate plate, or generic specialty license plate, if otherwise available to the vehicle owner or vehicle type, may be issued for the custom vehicle or street rod.

(2) (a) The owner of a kit vehicle shall pay the registration fees provided for in 61-3-321, the light vehicle registration fee provided for in 61-3-560 and 61-3-561, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a kit vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the kit vehicle under 61-3-331.

(3) (a) Depending on whether the specially constructed vehicle is a motor home, bus, truck having a manufacturer's rated capacity of more than 1 ton, truck tractor, or light vehicle, the owner of a specially constructed vehicle shall pay the registration fees provided for in 61-3-321, any registration fee or fee in lieu of tax provided for in 61-3-522, 61-3-529, 61-3-560, and 61-3-561, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a specially constructed vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the specially constructed vehicle under 61-3-331.

Section 4. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as otherwise provided in this chapter subsection (1)(b), a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(b) *A custom vehicle or street rod registered under [section 3(1)(b) or (1)(c)(iii)] may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod.*

(2) A person may not purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence at the time of application for registration. However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to:

(a) display license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of number plates issued under 61-3-332(4)(a) or special license plates issued under 61-3-332(10) or 61-3-421 more than 18 months after a new design of number plates or special license plates has been issued, except as provided in 61-3-332(4)(c) and (4)(d), 61-3-448, or 61-3-468.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601.

(6) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle."

Section 5. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle that is more than 30 years old and that is used solely as a collector's item and *is not used* for general transportation purposes may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom *the vehicle was* purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and *is not used* for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration fees, including fees in lieu of tax, the department shall file the application and register the motor vehicle in the manner specified in 61-3-303 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is

in existence and owned by the initial registrant. ~~Upon sale of the motor vehicle, the purchaser shall renew the registration and pay a license renewal fee of \$10 for a vehicle weighing more than 2,850 pounds and \$5 for a vehicle weighing 2,850 pounds or less.~~

Section 6. Section 61-9-204, MCA, is amended to read:

“61-9-204. Taillamps. (1) A motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a combination of vehicles must be equipped with at least one properly functioning taillamp mounted on the rear that emits a red light plainly visible from a distance of 500 feet to the rear, except that in the case of a combination of vehicles, only the taillamp on the rearmost vehicle need actually be seen from the distance specified. The vehicles mentioned in this subsection, other than a motorcycle, quadricycle, motor-driven cycle, or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, must be equipped with at least two properly functioning taillamps mounted on the rear that emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle.

(2) A taillamp upon a vehicle must be located at a height of not more than 72 inches or less than 15 inches.

(3) Either a taillamp or a separate lamp must illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. A taillamp or taillamps, together with a separate lamp for illuminating the rear registration plate, must be lighted whenever the headlamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but the motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

(5) A person may not operate a motor vehicle on a highway with taillamps that are covered by a lens or a plastic cover or with a tinted or colored material, substance, system, or component placed on or in front of rear lamps, taillamps, license plate lamps, or rear lamp combinations that obscures the taillamps or diminishes the distance of visibility required by this section.

(6) ~~This section does not prohibit a vehicle manufactured prior to 1960 from being equipped with a taillamp that includes within the red cover a center lens that is blue in color.~~ (a) *A custom vehicle or street rod may use a blue dot taillight, as defined in subsection (6)(b), as a stop lamp, a rear signal lamp, or a rear reflector.*

(b) *“Blue dot taillight” means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than 1 inch in diameter.”*

Section 7. Section 61-9-407, MCA, is amended to read:

“61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location. (1) A person may not move, or permit to be moved, a vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of the vehicle with fenders, splash aprons, or flaps. The fenders, splash aprons, or flaps must be designed, constructed, and attached to the vehicle in a manner that arrests and deflects

dirt, mud, water, rocks, and other substances that may be picked up by the rear wheels of the vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the fenders must extend in full width from a point above and forward of the center of the tire or tires over and to the rear of the tires.

(b) If the vehicle is equipped with splash aprons or flaps, the splash aprons or flaps must extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of the tire or tires and to the rear of the tires.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1), must be constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, the fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires; and

(b) the fender, splash apron, or flap is capable at all times of arresting and deflecting dirt, mud, water, or other substance that may be picked up and carried by the wheel or wheels.

(3) This section does not apply to ~~a street rod vehicle, as defined in [section 1],~~ motor vehicles not originally equipped with fenders, splash aprons, or flaps, or motor vehicles for which fenders, splash aprons, or flaps were not required by federal law or regulation at the time of manufacture.

~~(4) For purposes of 61-9-430 and this section, "street rod" means a vehicle manufactured before 1949 that has been modified in body style or design."~~

Section 8. Section 61-9-430, MCA, is amended to read:

"61-9-430. Bumpers. (1) A motor vehicle of less than 10,000 pounds gross vehicle weight or rating registered in Montana, except a motorcycle, a quadricycle, a motor-driven cycle, or a farm tractor, must be equipped with a front bumper and, unless the vehicle is equipped with work-performing features that make installation impractical or unnecessary, with a rear bumper.

(2) This section does not apply to ~~a street rod vehicle, as defined in 61-9-407(4) [section 1],~~ vehicles not originally equipped with front or rear bumpers, or vehicles for which bumpers were not required by federal law or regulation at the time of manufacture."

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [section 3].

Section 10. Coordination instruction. If both Senate Bill No. 285 and [this act] are passed and approved, then subsection (1)(b) of 61-3-411 in [this act] must read as follows:

“(b) the name and address of the person from whom the motor vehicle, trailer, semitrailer, or pole trailer was purchased;”.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 459

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2005, 2006, AND 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
Judiciary			
District Court Operations			
Safe kids, safe communities	2005	\$25,000	federal
All remaining fiscal year 2005 federal budget amendment authority for safe kids, safe communities is authorized to continue into federal fiscal year 2005.			
Office of the Governor			
Executive Office Program			
All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for the extradition and transportation of criminals, for additional legal services, and for the economic development made in Montana study is authorized to continue into federal fiscal year 2007.			
Mental Disabilities Board of Visitors			
All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for the additional operating costs is authorized to continue into federal fiscal year 2007.			

Secretary of State

Business & Government Services

Electronic records project 2005 \$30,005 federal

All remaining fiscal year 2005 federal budget amendment authority for the Help America Vote Act is authorized to continue into federal fiscal year 2007.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for technical assistance for the No Child Left Behind Act and recognizing American Indian cultural heritage is authorized to continue into federal fiscal year 2007.

Local Education Activities

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for technology programs, reading first, and vocational education is authorized to continue into federal fiscal year 2007.

Department of Justice

Legal Services Division

All remaining fiscal year 2005 federal budget amendment authority for the encourage to arrest project is authorized to continue into federal fiscal year 2006.

Highway Patrol Division

New entrant program 2005 \$400,000 federal

Division of Criminal Investigation

All remaining fiscal year 2005 federal budget amendment authority for bureau of justice assistance for drug enforcement is authorized to continue into state fiscal year 2007.

Forensic Science Division

All remaining fiscal year 2005 federal budget amendment authority for forensic casework DNA backlog reduction is authorized to continue into state fiscal year 2006.

Commissioner of Higher Education

Student Assistance Program

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds to be used for any unanticipated shortfall in existing student assistance programs is authorized to continue into federal fiscal year 2007.

Library Commission

Statewide Library Resources

All remaining fiscal year 2005 federal budget amendment authority for the development of an internet portal for input, processing, and database population for the environmental quality incentives program is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for recruiting and educating librarians is authorized to continue into state fiscal year 2007.

Historical Society

Administration Program

All remaining fiscal year 2005 federal budget amendment authority for the overhead for The Big Picture: Montana in the 20th Century is authorized to continue into federal fiscal year 2006.

Library Program

Advisory board administrative support program

2005	\$9,570	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Montana historical records advisory board's administrative support project is authorized to continue into state fiscal year 2006.

Museum Program

All remaining fiscal year 2005 federal budget amendment authority for The Big Picture: Montana in the 20th Century is authorized to continue into federal fiscal year 2006.

Historic Preservation Program

Access to bureau of land management state historic preservation databases

2005	\$10,000	federal
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National resources conservation service

2005	\$5,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for completing tasks to improve access to bureau of land management state historic preservation databases is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the national resources conservation service grant is authorized to continue into state fiscal year 2006.

Lewis and Clark Commission

Lewis and Clark national historic trail

2005	\$6,250	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Lewis and Clark national historic trail grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for further development, operation, maintenance, interpretation, and protection of the Lewis and Clark national historic trail and to coordinate and facilitate activities and projects associated with the bicentennial observance of the Lewis and Clark expedition is authorized to continue into federal fiscal year 2007.

Department of Fish, Wildlife, and Parks

Fisheries Division

All remaining fiscal year 2005 federal budget amendment authority for native prairie fish survey and inventory; aquatic nuisance species program coordination and activities; native species creel census and paddlefish monitoring; cooperative stream gauging on the Big Hole and Judith Rivers; the soft shell turtle project; Yellowstone cutthroat trout landowner outreach and technical assistance; the bureau of land management grant for population assessment of fluvial arctic grayling; the statewide wildlife grant for inventory and restoration actions for grayling, westslope cutthroat trout, and native lake

trout; and the bureau of land management grant for habitat restoration efforts for fluvial arctic grayling in the Big Hole River is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for Wedge Canyon fish monitoring; the United States fish and wildlife service grant for population assessments and monitoring of fluvial arctic grayling trout in the Big Hole, Sun, and Ruby Rivers; and the United States fish and wildlife service CCA grant for restoration work for the fluvial arctic grayling trout in the Big Hole, Sun, and Ruby Rivers is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for graduate student work on the design, construction, and installation of a fish screen on Lolo Creek and a second screen on the Clearwater River; the Thompson River road project; the construction of the siphon structure on the Republican canal; burbot status assessment on Missouri River; and Big Hole arctic grayling landowner outreach and technical assistance is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for biological data collection on pallid sturgeon in the Missouri River below Fort Peck dam; for a conservation geneticist; and for the seasonal movements and habitat use of native Yellowstone fish, turtles, and birds is authorized to continue into federal fiscal year 2007.

Wildlife Division

Chronic wasting disease
survey, mule deer

2006	\$120,000	federal
2007	\$120,000	federal

All remaining fiscal year 2005 federal budget amendment authority for sagebrush/shrub steppe ecosystem; sage grouse/leks; coordinated bird monitoring; monitor grizzly bear population for the northern continental divide ecosystem; birds and species of concern surveys in northeastern Montana; the elk calf mortality study; bear and mountain lion management; a mule deer survey; development of regional prairie dog abundance and distribution goals; swift fox conservation efforts; Burlington Northern Santa Fe endangered species grizzly bear habitat conservation planning; small mammal inventory of the swift fox prey base; and bat surveys and development of a bat conservation plan is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the development of a Montana wolf management plan and the administration of the forest legacy program is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the amphibian and aquatic reptile inventory and for the statewide small mammal survey and inventory is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for natural resource conservation service co-op positions; loon ecology project; delisting of the gray wolf in the northern rocky mountains; grizzly bear tracking; a bear management specialist; a chronic wasting disease survey for mule deer; the North American waterfowl management plan; and research for protection of long-term integrity of the northern Yellowstone winter range is authorized to continue into federal fiscal year 2007.

Parks Division

All remaining fiscal year 2005 federal budget amendment authority for Lewis and Clark bicentennial preparation is authorized to continue into state fiscal year 2006.

Capital Outlay

All remaining fiscal year 2005 federal budget amendment authority for the 3-mile wildlife management area and acquisition of land at the headwaters of the Bull River and Lake Creek watersheds is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the Swan Valley phase I legacy project is authorized to continue into state fiscal year 2007.

Department Management

Montana department of natural
resources and conservation
forested trust land habitat

conservation planning	2005	\$589,500	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Montana department of natural resources and conservation forested trust land habitat conservation planning is authorized to continue into federal fiscal year 2007.

Department of Environmental Quality

Planning, Prevention, and Assistance Division

Biological analyses for support of reassessment monitoring	2005	\$185,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the administration of state and tribal assistance grants for funding water and wastewater projects and the biological analyses for support of reassessment monitoring grant is authorized to continue into state fiscal year 2007.

Remediation Division

Libby asbestos/Troy superfund grant	2005	\$20,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the abandoned mine lands program is authorized to continue into state fiscal year 2006.

Department of Livestock

Milk and Egg Program

National conference of interstate milk shippers	2005	\$2,500	federal
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Department of Natural Resources and Conservation

Conservation and Resource Development Division

Conservation capacity funds to local conservation districts	2005	\$125,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for conservation capacity funds to local conservation districts is authorized to continue into state fiscal year 2006.

Water Resources Division

Community assistance national flood insurance	2005	\$74,213	federal
Water management activities in Montana	2005	\$50,000	federal
Big Hole grant	2005	\$99,214	federal
Gaging station	2005	\$31,016	federal

All remaining fiscal year 2005 federal budget amendment authority for community assistance national flood insurance is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the Big Hole grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for gaging stations is authorized to continue into federal fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for water management planning and implementation in the Milk River basin and for water management activities in Montana is authorized to continue into federal fiscal year 2006.

Forestry/Trust Lands

Resource/conservation development grant	2005	\$24,000	federal
Rural fire assistance	2005	\$485,000	federal
Forest land enhancement	2005	\$85,000	federal
Habitat conservation plan	2005	\$384,443	federal
Reconstruct dispatch records	2005	\$3,000	federal

All remaining fiscal year 2005 federal budget amendment authority for the resource/conservation development grant and for reconstruct dispatch records is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the east fork of Swift Creek bridge replacement is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the state fire and general forest health assistance grant and the rural fire assistance grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the forest land enhancement grant; habitat conservation plan; fuel for schools program; fuel for schools administration; hazardous fuel reduction on nonfederal lands near national forest lands; and the concrete barriers project is authorized to continue into federal fiscal year 2007.

Department of Administration

Administrative Financial Services Division

Project safe neighborhood	2005	\$517,197	federal
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All remaining fiscal year 2005 federal budget amendment authority for project safe neighborhood is authorized to continue into federal fiscal year 2006.

Information Technical Services Division

Statewide radio system	2005	\$987,477	federal
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Emergency notification system	2005	\$1,987,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the emergency notification system is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the statewide radio system is authorized to continue into state fiscal year 2007.

Department of Agriculture

Central Management Division

Pesticide data program	2005	\$61,740	federal
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All remaining fiscal year 2005 federal budget amendment authority for the pesticide data program is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the noxious weed mitigation grant is authorized to continue into federal fiscal year 2006.

Agricultural Sciences Division

Nonfat dry milk action	2005	\$760,000	federal
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Pesticide data program	2005	\$248,260	federal
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Organic certification	2005	\$35,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the noxious weed mitigation grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the pesticide data program is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the organic certification grant is authorized to continue into federal fiscal year 2007.

Department of Corrections

Juvenile Corrections

Serious and violent offender reentry grant	2005	\$17,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the serious and violent offender reentry grant is authorized to continue into state fiscal year 2006.

Department of Labor and Industry

Workforce Services Division

Talk America/Bresnan	2005	\$393,824	federal
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Flathead/Northwest

Multicompany	2005	\$452,920	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Talk America/Bresnan grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for the Flathead/Northwest Multicompany grant is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for special Reed Act funds for legitimate Wagner-Peyser Act administration and employment services activities, unemployment insurance benefits, and unemployment insurance administration is authorized to continue into federal fiscal year 2007.

Unemployment Insurance Division

All remaining fiscal year 2005 federal budget amendment authority for the internet employer tax and wage reporting system is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for special Reed Act funds for legitimate Wagner-Peyser Act employment services activities, unemployment insurance benefits, and unemployment insurance administration is authorized to continue into federal fiscal year 2007.

Department of Military Affairs

Army National Guard Program

Distance learning	2005	\$43,470	federal
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All remaining fiscal year 2005 federal budget amendment authority for the distance learning grant is authorized to continue into federal fiscal year 2005.

Disaster and Emergency Services

Homeland security grant-05	2005	\$13,693,406	federal
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All remaining fiscal year 2005 federal budget amendment authority for homeland security grant-05 is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for homeland security preparedness is authorized to continue into state fiscal year 2006.

Veterans' Affairs Program

Memorial wall construction	2005	\$85,000	federal
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Department of Public Health and Human Services

Human and Community Services

Food distribution, Indian reservations	2005	\$215,137	federal
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Food stamp benefits	2005	\$4,000,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for food distribution on Indian reservations is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the low-income weatherization grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the TANF high-performance bonus grant and the food stamp benefit grant is authorized to continue into federal fiscal year 2007.

Child and Family Services

Chaffee education and training vouchers program	2005	\$117,750	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Chaffee education and training vouchers program is authorized to continue into federal fiscal year 2005.

Disability Services Division

Disability services donation	2005	\$1,000	state special revenue
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IDEA enhancement	2005	\$350,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for IDEA enhancement is authorized to continue into federal fiscal year 2005.

Public Health and Safety Division

All remaining fiscal year 2005 federal budget amendment authority for rural access to emergency devices is authorized to continue into federal fiscal year 2006.

Senior and Long-Term Care Services

All remaining fiscal year 2005 federal budget amendment authority for aging and disability resource center program funding and for Montana's independence plus initiative is authorized to continue into federal fiscal year 2006.

Addictive and Mental Disorders

All remaining fiscal year 2005 federal budget amendment authority for the community incentive program enhancement project is authorized to continue into federal fiscal year 2006.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 460

[HB 18]

AN ACT EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REDUCING THE REQUIRED QUORUM FOR THE COMMISSION FROM SEVEN TO SIX; PROVIDING AN APPROPRIATION; AMENDING SECTION 90-1-131, MCA, SECTION 19, CHAPTER 512, LAWS OF 1999, AND SECTION 5, CHAPTER 69, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-131, MCA, is amended to read:

“90-1-131. (Temporary) State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the office of the governor as prescribed in 2-15-121.

(2) The commission is composed of ~~10~~ 10 members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:

(a) the state coordinator of Indian affairs;

(b) one member from the department of commerce;

~~(c)~~ one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the

commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) ~~Seven~~ Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(5) Any vacancy on the commission must be filled in the same manner as the original appointment.

(6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503. (Terminates June 30, ~~2005~~ ~~2009—see, Ch. 69, L. 2001.~~)”

Section 2. Appropriation. (1) There is appropriated for the biennium beginning July 1, 2005, to the state-tribal economic development commission from the state special revenue account established in 90-1-135 \$120,000 for the purpose of funding the commission’s activities, including but not limited to those specified in subsection (1).

(2) Money received in federal programs or grants that is deposited in the federal special revenue account established in 90-1-135 is appropriated for the biennium beginning July 1, 2005, in an amount not to exceed \$2 million to the state-tribal economic development commission for purposes consistent with 90-1-130 through 90-1-135.

(3) The appropriations in this section are biennial.

Section 3. Section 19, Chapter 512, Laws of 1999, is amended to read:

“**Section 19. Termination.** [This act] terminates June 30, ~~2001~~ 2009.”

Section 4. Section 5, Chapter 69, Laws of 2001, is amended to read:

“**Section 5.** Section 19, Chapter 512, Laws of 1999, is amended to read:

“**Section 19. Termination.** [This act] terminates June 30, ~~2001~~ 2005 2009.””

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 461

[HB 60]

AN ACT ESTABLISHING A DECONTAMINATION STANDARD FOR THE CLEANUP OF INDOOR PROPERTY CONTAMINATED BY THE CLANDESTINE MANUFACTURE OF METHAMPHETAMINE; PROVIDING

FOR RULEMAKING AUTHORITY TO CHANGE THE STANDARD OR TO ADOPT SIMILAR STANDARDS FOR PRECURSORS TO METHAMPHETAMINE TO PROTECT HUMAN HEALTH; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE MINIMUM STANDARDS AND REQUIREMENTS FOR CERTIFYING PERSONS TO CONDUCT METHAMPHETAMINE LAB REMEDIATION ACTIVITIES; REQUIRING NOTICE TO SUBSEQUENT OCCUPANTS OF CONTAMINATED INHABITABLE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING CIVIL IMMUNITY FOR A PROPERTY OWNER AND OWNER'S AGENT IN CERTAIN INSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Finding and purpose. The legislature finds that some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine. Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of [sections 1 through 6] is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards.

Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 6], the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) (a) "Inhabitable property" means any building or structure used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, either as a dwelling or a business, including a storage facility, mobile home, or recreational vehicle, that may be sold, leased, or rented for any length of time.

(b) The term does not mean any water system, sewer system, land, or water outside of a building or structure described in subsection (2)(a).

(3) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floors and floor coverings, counters, furniture, heating and cooling duct work, and any other surfaces to which inhabitants of the building or structure may be exposed.

Section 3. Decontamination standards — rulemaking authority — samples. (1) The decontamination standard for methamphetamine inside inhabitable property is less than or equal to 0.1 micrograms of methamphetamine per 100 square centimeters of surface material unless a different standard is adopted by the department by rule to protect human health. The department may adopt standards by rule for precursors to methamphetamine that are consistent with the standard for methamphetamine.

(2) (a) The department may by rule establish the number and locations of surface material samples to be collected based on the circumstances of the contamination and acceptable testing methods.

(b) In the absence of a rule described in subsection (2)(a), at least three samples must be collected from the surface material most likely to be contaminated at each property.

Section 4. Contractor certification — department authority. (1) The department is authorized to establish by rule minimum standards for the training and certification of contractors and their employees who are to perform the assessment or remediation of inhabitable property contaminated by methamphetamine residues.

(2) The department may train and test or may approve courses to train and test contractors and their employees in the proper methods of assessing, remediating, and testing inhabitable property contaminated by methamphetamine residues. If the department conducts the training and testing of contractors and their employees, it may adopt rules to provide for the assessment of reasonable fees to cover the state's costs of providing the training and testing.

(3) The department shall establish by rule procedures for the certification of contractors and their employees, including procedures for the decertification of contractors and their employees for cause. The rules may provide for the assessment of reasonable fees to cover the cost of the contractor certification program.

(4) Any contractor and the contractor's employees certified to perform the remediation of inhabitable property in any other state are approved for certification in Montana unless the department determines that the certification process in the other state is not substantially similar to the minimum certification standards established by the department.

(5) The department shall maintain a list of certified contractors and shall make the list available to local health officials, law enforcement officials, and the public.

Section 5. Occupant notice by owner of inhabitable property — immunity. (1) An owner of inhabitable property that is known by the owner to have been used as a clandestine methamphetamine drug lab shall notify in writing any subsequent occupant or purchaser of the inhabitable property of that fact if the inhabitable property has not been remediated to the standards established in [section 3] by a contractor who is certified in accordance with [section 4].

(2) An owner or an owner's agent referred to in subsection (1) may provide notice to a subsequent occupant or purchaser that the owner or the owner's agent has submitted:

(a) documentation to the department by a contractor who is certified pursuant to [section 4] that the inhabitable property has been remediated to the standards established in [section 3]; or

(b) documentation by a certified contractor that the property meets the decontamination standards without decontamination.

(3) Notice as required or authorized in this section must occur before agreement to a lease or sale of the inhabitable property.

(4) If the department has confirmed that the decontamination standard provided for in [section 3] has been met and if notice has been given as provided in subsections (2) and (3), the owner and the owner's agent are not liable in any

action brought by a person who has been given notice that is based on the presence of methamphetamine in an inhabitable property.

(5) The immunity provided for in subsection (4) does not apply to an owner or an owner's agent who caused the methamphetamine contamination.

Section 6. Reporting requirements. (1) Whenever a state or local law enforcement agency becomes aware that an inhabitable property has been contaminated by its use as a clandestine methamphetamine drug lab, the agency shall report the contamination to the department and to the local health officer.

(2) The department shall maintain a list of inhabitable property that has been reported as contaminated, and the list must be made available to the public through a website except as provided in subsection (3).

(3) Upon confirmation by the department that an inhabitable property has been properly remediated to the standards established in [section 3] or that the inhabitable property meets the decontamination standards without decontamination, the department shall remove the inhabitable property from the list required in subsection (2). The department shall provide written notification to the local health officer and the property owner of record when the documentation shows that the inhabitable property has been properly assessed or remediated.

(4) The department may adopt rules establishing reasonable requirements for the sufficiency of documentation to be provided by a certified contractor.

(5) Notwithstanding any other provision of law, once an inhabitable property has been removed from the list required in subsection (2), a property owner, landlord, or real estate agent is not required to report or otherwise disclose the past contamination.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified in Title 75, chapter 10.

Approved April 28, 2005

CHAPTER NO. 462

[HB 63]

AN ACT GENERALLY REVISING SCHOOL FINANCE LAWS; ALLOWING SCHOOL DISTRICTS TO LEASE PERSONAL PROPERTY; EXPANDING THE USES FOR CERTAIN SCHOOL DISTRICT FUNDS; CHANGING A BUDGET DEADLINE FOR JOINT DISTRICTS; INCREASING THE ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; PROVIDING FOR 3-YEAR AVERAGING OF ANB FOR SCHOOL DISTRICTS WITH DECLINING ENROLLMENT FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; ALLOWING A SCHOOL DISTRICT TO PERMISSIVELY LEVY UP TO THE SAME OVER-BASE PROPERTY TAX REVENUE LEVIED IN THE PREVIOUS FISCAL YEAR; REVISING CERTAIN CALCULATIONS FOR GUARANTEED TAX BASE FUNDING; REVISING THE LIMITATIONS ON SCHOOL DISTRICT BONDED INDEBTEDNESS; CONFORMING CERTAIN STATUTES TO CURRENT LAW; REMOVING A REFERENCE TO A ONE-TIME-ONLY STATE PAYMENT TO SCHOOL DISTRICTS; TEMPORARILY EXTENDING SCHOOL ELECTION DEADLINES;

PROVIDING FOR INTERDISTRICT AGREEMENTS FOR FUND TRANSFERS BY FEBRUARY 1 OF THE CURRENT FISCAL YEAR; AMENDING SECTIONS 20-5-323, 20-6-607, 20-7-102, 20-9-130, 20-9-131, 20-9-142, 20-9-151, 20-9-152, 20-9-306, 20-9-308, 20-9-311, 20-9-314, 20-9-321, 20-9-353, 20-9-366, 20-9-406, AND 20-9-443, MCA; REPEALING SECTION 20-9-375, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-323, MCA, is amended to read:

"20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in ~~20-9-306(10)~~ 20-9-306, received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 25 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 2. Section 20-6-607, MCA, is amended to read:

"20-6-607. Leasing district property and disposition of any rentals.

The trustees of ~~any a~~ district may rent, or lease, ~~or let~~ any buildings, land, ~~or~~ facilities, ~~or personal property~~ of the district under the terms specified by the trustees. Any money collected for ~~such the~~ rental, or lease, ~~or letting~~ may, in the discretion of the trustees, be used for any proper school purpose and deposited in ~~such any~~ fund as the trustees consider appropriate."

Section 3. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of every school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may ~~only~~ be granted *only* to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(10)(e)(i)~~ *20-9-306(11)(c)(ii)*."

Section 4. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of every school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may ~~only~~ be granted *only* to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(10)(e)(i) 20-9-306(10)(c)(ii).~~"

Section 5. Section 20-9-130, MCA, is amended to read:

"20-9-130. District obligation for students in youth detention facility. A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's tuition fund *or impact aid fund.*"

Section 6. Section 20-9-131, MCA, is amended to read:

"20-9-131. Final budget meeting. (1) On or before August 15, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and, ~~subject to 15-10-420,~~ determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 5 days."

Section 7. Section 20-9-142, MCA, is amended to read:

"20-9-142. Fixing and levying taxes by board of county commissioners. On the fourth Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. ~~Subject to 15-10-420, it~~ It is the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget."

Section 8. Section 20-9-151, MCA, is amended to read:

"20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law ~~and subject to 15-10-420,~~ the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be

prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the ~~second~~ *fourth* Monday in August."

Section 9. Section 20-9-152, MCA, is amended to read:

"20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the ~~second~~ *fourth* Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall, ~~subject to 15-10-420,~~ fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent."

Section 10. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and ~~up to~~ 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~\$220,646~~ \$225,273 for each high school district;

(b) ~~\$10,850~~ \$20,275 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school

or middle school, calculated as follows *using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(i) ~~\$19,859~~ \$20,275 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$220,646~~ \$225,273 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(7)(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations *and using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,371~~ \$5,584 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~\$4,031~~ \$4,366 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~\$4,031~~ \$4,366 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$5,371~~ \$5,584 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 11. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment.

(3) “BASE budget” means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and ~~up to~~ 140% of the special education allowable cost payment.

(4) “BASE budget levy” means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) “BASE funding program” means the state program for the equitable distribution of the state’s share of the cost of Montana’s basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) “Basic entitlement” means:

(a) ~~\$220,646~~ \$230,199 for each high school district;

(b) ~~\$19,859~~ \$20,718 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows *using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(i) ~~\$19,859~~ \$20,718 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$220,646~~ \$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) “Budget unit” means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

~~(7)~~(8) “Direct state aid” means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(9) “Maximum general fund budget” means a district’s general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district’s special education allowable cost expenditures to the district’s special education allowable cost

payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations *and using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,371~~ \$5,704 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~\$4,031~~ \$4,456 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~\$4,031~~ \$4,456 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$5,371~~ \$5,704 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 12. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of ~~5~~ 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the ~~5-year~~ 5-year period. ~~A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:~~

~~(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and~~

~~(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.~~

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) *The Except as provided in 20-9-353(8), the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.*

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 13. Section 20-9-311, MCA, is amended to read:

“20-9-311. Calculation of average number belonging (ANB) — 3-year averaging. (1) Average number belonging (ANB) must be computed *for each budget unit* as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that *the ANB is calculated as a separate budget unit* when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated ~~separately~~ *as a separate budget unit* for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time

pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10)(a) For an elementary or high school district that has been in existence for 3 or more years, the district's maximum general fund budget and BASE budget for the ensuing year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing year must be calculated separately for the elementary and high school programs pursuant to subsection (10)(a) and then combined.

(11) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (11)(a) by three."

Section 14. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic

entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

- (a) the enrollment for the current school fiscal year;
- (b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;
- (c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;
- (d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and
- (e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage ~~increase~~ by which the estimated enrollment ~~increase~~ exceeds the ~~current~~ enrollment *used for the budgeted ANB*; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is ~~at least~~ *greater than 6%*.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is *determined using* the difference between the enrollment for the ensuing school fiscal year and 106% of the ~~current~~ enrollment *used to calculate the budgeted ANB*. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than ~~the average number belonging used for BASE funding program and entitlement calculations~~ *the enrollment used to determine budgeted ANB*, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, *as provided in subsection (5)*, using the actual ~~average number belonging~~ *enrollment in place of the estimated enrollment*.

(c) All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

Section 15. Section 20-9-321, MCA, is amended to read:

"20-9-321. Allowable cost payment for special education. (1) *As used in this section, "ANB" means the current year ANB.*

(2) *The 3-year average ANB provided for in 20-9-311(10) does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.*

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

~~(2)(4)~~ (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection ~~(2)(a)~~ ~~(4)(a)~~ must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection ~~(2)(a)(i)~~ ~~(4)(a)(i)~~ must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection ~~(2)(a)(ii)~~ ~~(4)(a)(ii)~~ must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection ~~(4)(6)~~ (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To

ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection ~~(2)(a)(iii)~~ ~~(4)(a)(iii)~~, reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection ~~(2)(a)(iv)~~ ~~(4)(a)(iv)~~, three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

~~(3)~~(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

~~(4)~~(6) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

~~(5)~~(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

~~(6)~~(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred."

Section 16. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

(a) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(2); or

(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3).

(2) ~~When~~ When the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by 20-9-308(5) must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) ~~When~~ Except as provided in subsection (8), when the trustees of a district propose to adopt the general fund budget amount in excess of the maximum

general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

- ☐ FOR budget authority and any levy.
- ☐ AGAINST budget authority and any levy.

(4) If the election on any additional financing or budget authority for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.

(6) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(7) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount or an amount in excess of the maximum general fund budget amount for the district, as allowed by 20-9-308(3), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (6) of this section.

(8) *The trustees of the district may permissively levy up to the same over-BASE property tax revenue levied in the prior fiscal year.*

Section 17. Section 20-9-366, MCA, is amended to read:

“20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) “County retirement mill value per elementary ANB” or “county retirement mill value per high school ANB” means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts’ and high school districts’ current year total per-ANB entitlement amounts.

(2) (a) “District guaranteed tax base ratio” for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district’s current year BASE budget amount less direct state aid *and the state special education allowable cost payment.*

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total ANB amount used to calculate the school districts' current year total per-ANB entitlement state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 18. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is 45% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is up to 90% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the ~~corresponding statewide mill value per elementary ANB or per high school ANB~~ *facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366* may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is 45% of the corresponding ~~statewide~~ *facility guaranteed* mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the ~~statewide~~ *facility guaranteed* mill value per elementary ANB times 1,000 times the elementary ANB of the district and the ~~statewide~~ *facility guaranteed* mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 19. Section 20-9-443, MCA, is amended to read:

“20-9-443. Disposition of remaining debt service fund. (1) Except as provided in subsection (2), when all of the bonds, and bond interest, and *special improvement district obligations* of a school district have been fully paid, all money remaining in the debt service fund for the school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district, ~~provided that if~~ the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid account established pursuant to 20-9-514.”

Section 20. Extension of school election deadlines. In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 3, 2005, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2005 only, a school district may limit the regular school election scheduled for May 3, 2005, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 3, 2005, regular school elections that fall on or before April 15 are extended to April 25, 2005, except that the timeline for posting the election notice is changed to April 25, 2005, through May 3, 2005.

Section 21. Interdistrict agreements — fund transfers. (1) The trustees of any two school districts that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district may enter into an interdistrict agreement to provide for the joint funding and operation and maintenance of both districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the board of trustees of both districts by February 1 of the current fiscal year.

(2) All expenditures in support of the interdistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each district may transfer funds into the interlocal cooperative fund from the general fund of the district. Transfers to the interlocal cooperative fund from each school district are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund and must be completed by February 1 of the current fiscal year.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the general fund from which the transfer was made.

Section 22. Repealer. Section 20-9-375, MCA, is repealed.

Section 23. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 21].

Section 24. Effective dates — applicability. (1) [Sections 1 and 12 through 15] are effective on passage and approval and apply to school budgets for the school fiscal years beginning on or after July 1, 2005.

(2) [Sections 2, 3, 5 through 9, and 17 through 25] are effective on passage and approval.

(3) [Section 4] is effective July 1, 2007.

(4) [Section 10] is effective July 1, 2005, and applies to school budgets for the school fiscal year beginning July 1, 2005.

(5) [Section 11] is effective July 1, 2006, and applies to school budgets for the school fiscal year beginning July 1, 2006.

(6) [Section 16] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the preparation of school budgets for the 2006 school fiscal year.

Section 25. Termination. (1) [Section 10] terminates June 30, 2006.

(2) [Sections 3 and 11 through 16] terminate June 30, 2007.

Approved April 28, 2005

CHAPTER NO. 463

[HB 83]

AN ACT REVISING THE SCHOOL DISTRICT TUITION LAWS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION FOR CHILDREN WHO ATTEND SCHOOL OUTSIDE OF THE DISTRICT OF RESIDENCE BECAUSE OF PLACEMENT IN FOSTER CARE OR A GROUP HOME; ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT REPORT THE NUMBER OF OUT-OF-DISTRICT STUDENTS ATTENDING SCHOOL IN THE DISTRICT BECAUSE OF GEOGRAPHIC CONDITIONS; ELIMINATING THE REQUIREMENT FOR THE COUNTY SUPERINTENDENT TO PAY TUITION ON BEHALF OF THE STATE UNDER CERTAIN CONDITIONS; ESTABLISHING A TUITION PAYMENT SCHEDULE FOR DISTRICTS THAT PAY TUITION; CLARIFYING WHERE A DISTRICT MUST CREDIT TUITION RECEIPTS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION AND TRANSPORTATION COSTS FOR A CHILD WITH A DISABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-3-205, 20-5-321, 20-5-324, 20-7-420, 20-9-212, 20-9-335, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-205, MCA, is amended to read:

“20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

~~(4)~~ act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

~~(5)~~(4) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

~~(6)~~(5) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

~~(7)~~(6) keep a transcript of the district boundaries of the county;

~~(8)~~(7) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

~~(9)~~(8) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

~~(10)~~(9) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

~~(11)~~(10) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

~~(12)~~(11) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

~~(13)~~(12) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

~~(14)~~(13) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

~~(15)~~(14) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

~~(16)~~(15) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

~~(17)~~(16) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

~~(18)~~(17) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

~~(19)~~(18) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

~~(20)~~(19) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

~~(21)~~(20) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

~~(22)~~(21) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

~~(23)~~(22) administer the oath of office to trustees without the receipt of pay for administering the oath;

~~(24)~~(23) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

~~(25)~~(24) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

~~(26)~~(25) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.”

Section 2. Section 20-5-321, MCA, is amended to read:

“20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child’s district of residence or in a public school district of a state or province that is adjacent to the county of the child’s residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, ~~due to~~ *because of* geographic conditions between the child’s home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child’s home to school on a dirt road or greater than a total of 60 miles one way from the child’s home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under ~~20-5-324(6)~~ 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice ~~attendance~~ shall approve the out-of-district attendance agreement and ~~notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).~~ The trustees of the district of attendance shall:

(a) *notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and*

(b) *submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.*

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, ~~due to~~ *because of* insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 3. Section 20-5-324, MCA, is amended to read:

"20-5-324. Tuition report and payment provisions — exemption. (1) ~~At~~ *Following* the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent of public instruction:

(a) the name and district of residence of each child who ~~is attending~~ *attended* a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of ~~20-5-321(1)(b), 20-5-321(1)(d); or (1)(e) in the previous school year;~~

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each ~~reported~~ *reported under the provisions of subsection (1)(a);*

(d) the names, districts of attendance, and amount of tuition ~~to be~~ *paid by* the district for resident students attending public schools out of state *in the previous school year;* and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools *in the previous school year.*

(2) ~~The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides. Subject to the limitations of 20-5-323, the superintendent of public instruction shall:~~

(a) *pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;*

(b) *determine the total per-ANB entitlement for which the district would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and*

(c) *reimburse the district of residence for the state portion of the per-ANB entitlement for each student, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.*

(3) ~~Before July 30, the county superintendent shall report the information in subsections (1)(d) and (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection. In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.~~

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence *at the resident district's expense* under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) out of the money realized to date from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(b) When a child has approval to attend a school outside the child's district of residence *because of a parent's or guardian's request* under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

~~(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.~~

~~(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.~~

~~(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).~~

~~(9)(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.~~

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for

that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

~~(b)~~(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

~~(e)~~(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

~~(10)~~(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.”

Section 4. Section 20-7-420, MCA, is amended to read:

“20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child’s district of residence for special education purposes is the residence of the child’s parents or of the child’s guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent’s last-known district of residence is the child’s district of residence.

(2) ~~The county of residence~~ *superintendent of public instruction* is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. ~~The county of residence~~ *superintendent of public instruction* is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children’s psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district’s costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.”

Section 5. Section 20-9-212, MCA, is amended to read:

“20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

- (a) the basic county tax for elementary equalization;
- (b) the basic county tax for high school equalization;
- (c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned ~~and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7)~~, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 6. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid ~~after the deduction of the county's obligation for tuition paid under the provisions of 20-5-324(6) and (7)~~.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments."

Section 7. Section 20-10-105, MCA, is amended to read:

“20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever ~~a county~~ *the state* is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.”

Section 8. Appropriation. There is appropriated \$336,000 from the general fund to the superintendent of public instruction for the biennium beginning July 1, 2005, to pay the tuition and transportation costs required under 20-5-324(2) and 20-7-420.

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 464

[HB 102]

AN ACT DEPOSITING FEES FROM THE REGISTRATION OF CERTAIN VEHICLES AND DRIVER'S LICENSES TO THE STATE GENERAL FUND; STATUTORILY APPROPRIATING FROM THE STATE GENERAL FUND TO THE MONTANA HIGHWAY PATROL OFFICERS' RETIREMENT PENSION TRUST FUND THE AMOUNTS REQUIRED TO PAY CERTAIN SUPPLEMENTAL BENEFITS UNDER THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 15-1-122, 17-7-502, 19-6-401, 19-6-404, 19-6-709, 61-3-527, 61-3-530, 61-3-562, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State contribution for supplemental benefits — statutory appropriation. The state shall annually contribute to the pension trust fund the lump-sum amount determined by the board as required to pay benefits under 19-6-709. The amount must be calculated based upon the number of individuals eligible as provided in 19-6-709(1) through (3) and based upon the amount of benefit for the eligible individuals as provided in 19-6-709(4)(a) through (4)(c). The amount is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund.

Section 2. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) ~~\$75,000 in fiscal year 2003;~~

~~(b)~~(a) \$0 in fiscal years 2004 and 2005;

(e)(b) \$3,050,205 in fiscal year 2006; and

~~(d)~~(c) in each succeeding fiscal year, the amount in subsection ~~(2)(e)~~ (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement

a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

~~(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:~~

~~(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;~~

~~(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;~~

~~(g)(f) to the search and rescue account provided for in 10-3-801:~~

~~(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;~~

~~(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and~~

~~(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803; and~~

~~(h)(g) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).~~

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; ~~19-6-404; [section 1];~~ 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 4. Section 19-6-401, MCA, is amended to read:

“19-6-401. Payments into pension trust fund. *There is a pension trust fund for the payment of benefits under the retirement system.* All appropriations made by the state, all contributions by members, in the amount specified, and all interest on and ~~increase of earnings from the investments and investment of money under in this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion~~

~~of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be deposited in the pension trust fund."~~

Section 5. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution — statutory appropriation. The state of Montana shall ~~annually~~ contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members, *which is payable, as appropriated by the legislature, from the same source that is used to pay compensation to the members; and*

(2) an amount equal to 10.18% of the total compensation of the members, *which is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund."*

Section 6. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) ~~The amount of fees transferred statutorily appropriated to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b) under [section 1]~~ must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the

previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 7. Section 61-3-527, MCA, is amended to read:

“61-3-527. One-time fee in lieu of tax for motorcycles and quadricycles — permanent registration. (1) (a) There is a one-time fee in lieu of property tax of \$20 in calendar year 2004 and, in each subsequent year, ~~\$40~~ **\$41.25** imposed on motorcycles and quadricycles that are subject to one-time registration. The fee is in addition to registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle with special license plates issued under 61-3-415 shall pay an annual fee based on the age of the motorcycle or quadricycle and the size of the engine, according to the following schedule:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

- (i) less than 5 years old, \$30;
- (ii) 5 years old but less than 11 years old, \$15; and
- (iii) 11 years old and older, \$6.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

- (i) less than 5 years old, \$55;
- (ii) 5 years old but less than 11 years old, \$20; and
- (iii) 11 years old and older, \$6.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

- (i) less than 5 years old, \$90;
- (ii) 5 years old but less than 11 years old, \$50; and
- (iii) 11 years old and older, \$6.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer’s designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

~~(4) A person who registers a motorcycle or quadricycle as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this subsection from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.~~

~~(5)~~(4) Whenever a transfer of ownership of a motorcycle or quadricycle occurs, the one-time fees required under this section must be paid by the new

owner. ~~(Subsection (4) terminates on occurrence of contingency — sec. 24, Ch. 191, L. 2001.)~~”

Section 8. Section 61-3-530, MCA, is amended to read:

“61-3-530. Fee for trailers — exception. (1) Except as provided in subsections (2) and (3), the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is a one-time fee and is:

(a) for a trailer, pole trailer, or semitrailer with a declared weight under 6,000 pounds, \$25 in calendar year 2004 and, in each subsequent year, ~~\$50~~ \$51.25; and

(b) for a trailer, pole trailer, or semitrailer with a declared weight of 6,000 pounds or more, \$65 in calendar year 2004 and, in each subsequent year, ~~\$130~~ \$131.25.

(2) This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that:

(a) is registered through a proportional registration agreement under 61-3-721; or

(b) constitutes inventory of a trailer, pole trailer, or semitrailer dealership.

(3) Whenever a transfer of ownership of a trailer, pole trailer, or semitrailer described in subsection (1) occurs, the one-time fee required under subsection (1) must be paid by the new owner.

(4) ~~A person who permanently registers a trailer, pole trailer, or semitrailer as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this section from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.”~~

Section 9. Section 61-3-562, MCA, is amended to read:

“61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) Except as provided in subsection ~~(1)(c)~~ (1)(b), the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a ~~\$50~~ \$52 registration fee, the applicable registration and license fees under 61-3-321 and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and

(vi) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) ~~A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle~~

registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(e)(b) The following series of license plates may not be used for purposes of permanent registration of a vehicle:

- (i) Montana national guard license plates issued under 61-3-458(2)(b);
- (ii) reserve armed forces license plates issued under 61-3-458(2)(c);
- (iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);
- (iv) amateur radio operator license plates issued under 61-3-422;
- (v) collegiate license plates issued under 61-3-465; and
- (vi) generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the ~~\$50~~ \$52 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and file an application for registration under 61-3-303. ~~(Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)~~

Section 10. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

~~(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.~~

~~(b)(a)~~ (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection ~~(1)(b)(i)~~ (1)(a)(i) must be deposited into the state general fund.

~~(e)(b)~~ (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection ~~(1)(e)(i)~~ (1)(b)(i) must be deposited into the state general fund.

~~(d)(c)~~ The amount of 20.7% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

~~(e)(d)~~ In addition to the amounts deposited pursuant to subsections ~~(1)(b)(ii)~~ (1)(a)(ii) and ~~(1)(e)(ii)~~ (1)(b)(ii), the amount of ~~54.5%~~ 76.8% of each driver's license fee and ~~62.5%~~ 87.5% of each duplicate driver's license fee must be deposited into the state general fund.

~~(f)(e)~~ If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

~~(g)(f)~~ The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections ~~(1)(b)(i)~~ (1)(a)(i) and ~~(1)(e)(i)~~ (1)(b)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the ~~account in the state special revenue fund, as provided in subsection (1)(a) state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002,~~ and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections ~~(1)(a) and (1)(d) through (1)(g)~~ (1)(c) through (1)(f).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the ~~account in the state special revenue fund as provided in subsection (1)(a) state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002,~~ the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections ~~(1)(a), (1)(b)(ii), (1)(e)(ii), and (1)(d) through (1)(g)~~ (1)(a)(ii), (1)(b)(ii), and (1)(c) through (1)(f)."

Section 11. Transfer of funds. On [the effective date of this act], the balance of money remaining in the state special revenue account for the highway patrol officers' retirement pension trust fund that was contained in 61-5-121 must be transferred to the state general fund.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, part 4, and the provisions of Title 19, chapter 6, part 4, apply to [section 1].

Section 13. Effective date. [This act] is effective July 1, 2005.

Section 14. Termination. The amendments to 19-6-709 and [section 1] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709.

Approved April 28, 2005

CHAPTER NO. 465

[HB 146]

AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana False Claims Act".

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Section 3. False claims — procedures — penalties. (1) A person causing damages in excess of \$500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) In a civil action brought under [section 5 or 6], a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen may not file a complaint or civil action:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

Section 4. Limitation of actions. A complaint or civil action may not be filed under [section 5 or 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

Section 5. Investigation and civil action by government attorney. A government attorney may investigate an alleged violation of [section 3] and file a civil action.

Section 6. Complaint by private citizen — civil action. (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and complaint, the government attorney may elect to file a civil action and may, for good cause shown, move the court for extensions of the time for filing an action.

(3) If the government attorney files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a civil action, no other private citizen may file a civil action based on the facts underlying the pending action.

Section 7. Dismissal of private citizen's civil action. On the motion of a government attorney, the court may dismiss a private citizen's civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

Section 8. Settlement. An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

Section 9. Burden of proof — effect of criminal conviction. (1) The plaintiff in an action under [section 5 or 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 5 or 6] that involves the same event or events as the criminal proceeding.

Section 10. Distribution of damages and civil penalty. If an action is settled or the governmental entity or private citizen prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state.

Section 11. Costs and attorney fees. A governmental entity in an action in which its government attorney filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are

awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

Section 12. Prohibitions on employers — employee remedies. (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

Section 13. Repealer. Section 17-8-231, MCA, is repealed.

Section 14. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 466

[HB 159]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES

AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, (including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, ~~or~~ title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any *tribal* subdivision; or subsidiary; or *any* business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iii) a no-additional-cost service; or

(iv) *wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.*

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" ~~is~~ *means* a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under

an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant to sections 214(e) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);~~

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian; ~~or~~

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; *or*

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 3. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports,

make investigations, and take action ~~as~~ *that* it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

~~(5) The department may delegate to the department of revenue all duties associated with the administration of unemployment insurance contributions and the employment security account. The duties must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

~~(6) The department may revoke its delegation to the department of revenue at any time.~~

~~(7)(5)~~ Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department *of revenue* for recruitment purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions*.

~~(8)(6)~~ The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(9)(7)~~ (a) The termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the

termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions.*

~~(10)~~(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and, ~~subject to the provisions of subsection (5),~~ succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection ~~(10)~~ do not apply to the program budget plan agreement between the department and the United States department of labor.”

Section 4. Section 39-51-302, MCA, is amended to read:

“39-51-302. Administrative rules. ~~(1)~~ The department may adopt procedural and substantive rules necessary to implement this chapter.

~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).”~~

Section 5. Section 39-51-409, MCA, is amended to read:

“39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) *Money deposited in the employment security account may be appropriated to the department for payment of:*

- (a) *unemployment insurance benefits;*
- (b) *expenses incurred in collecting money deposited in the account;*
- (c) *expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;*
- (d) *expenses incurred for the apprenticeship and training program;*
- (e) *expenses for displaced homemaker programs provided for under 39-7-305;*
- (f) *expenses for department research and analysis functions that provide employment, wage, and economic data; and*
- (g) *expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.*

~~(2)~~(3) The department may transfer funds from the *employment security* account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide *for the* employment services programs *identified in subsection (2).*

~~(3)~~(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types.”

Section 6. Section 39-51-1110, MCA, is amended to read:

“39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department ~~or its delegate, as provided in 39-51-301,~~ determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its delegate pursuant to 39-51-301(5),~~ shall credit or refund the amount to the employer, without interest.

(2) If the department ~~or its delegate pursuant to 39-51-301(5),~~ determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year.”

Section 7. Section 39-51-1206, MCA, is amended to read:

“39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by ~~regulation rule~~ provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless ~~and~~ until the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ the mailing date of the notice. *The department may extend the 30-day period for good cause.*

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.”

Section 8. Section 39-51-1218, MCA, is amended to read:

“39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27

1759	MONTANA SESSION LAWS 2005				Ch. 466
6		0.87	1.07	1.27	1.47
7		1.07	1.27	1.47	1.67
8		1.27	1.47	1.67	1.87
9		1.47	1.67	1.87	2.07
10		1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers				
1		3.17%	3.37%	3.57%	3.77%
2		3.37	3.57	3.77	3.97
3		3.57	3.77	3.97	4.17
4		3.77	3.97	4.17	4.37
5		3.97	4.17	4.37	4.57
6		4.17	4.37	4.57	4.77
7		4.37	4.57	4.77	4.97
8		4.57	4.77	4.97	5.17
9		4.77	4.97	5.17	5.37
10		6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V (.0135)	Sched. VI (.0095)	Sched. VII (~~.00575~~) (.0075)	Sched. VIII (.0050)	Sched. IX (....)	Sched. X (....)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77

4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37

Section 9. Section 39-51-1219, MCA, is amended to read:

“39-51-1219. Procedures for the substitution, merger, transfer, or acquisition of an employer account by a successor employing unit — prohibitions and penalties — definitions. (1) ~~(a) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) If an employer~~ in any manner succeeds to or acquires all or ~~substantially all a portion of the trade or business of an another employer or transfers all or a portion of the employer's trade or business to another employer~~ and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer. ~~who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:~~

~~(a) (b) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.~~

~~(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.~~

~~(b)(d) any~~ Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer's right to appeal the transfer is waived.~~

~~(2) (a) Whenever any individual or organization (whether or not a covered employer) in any manner If an employer transfers, succeeds to, or acquires all or a portion part of the trade or business of an a covered employer who at the time of acquisition was a covered employer and whenever that and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer~~

to the successor employer if that portion of the trade or business is continued by the successor employer.:

~~(a) (b) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the In order to make the transfer, a joint application for the transfer of the experience rating record must be made by of the predecessor employer and the successor employer within 90 days after of the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~

~~(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.~~

~~(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.~~

~~(b)(e) any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(2) (a)(f)~~ The 90-day period for filing the joint application may be extended at the discretion of the department.

~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.~~

~~(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.~~

~~(4)(3)~~ (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the predecessor's predecessor employer's trade or business and if:

(i) *the employers are not under substantially common ownership, management, or control at the time of acquisition, the successor's successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or*

(ii) *the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.*

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the predecessor's predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the successor's successor employer's rate is the rate ~~applicable~~ assigned to the predecessor employer with respect to the period immediately preceding as of the date of acquisition, but if. If there was more than one predecessor employer, the successor's successor employer's rate must be a newly computed rate based on the combined experience of the predecessors predecessor employers and becomes, becoming effective immediately after the date of acquisition and remaining remains in effect for the balance of the rate year.

(4) *The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.*

(5) (a) *The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:*

(i) *the person is not otherwise an employer at the time of the acquisition; and*

(ii) *the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.*

(b) *A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.*

(6) *Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:*

(a) *the cost of acquisition;*

(b) *whether the person continued the trade or business operation;*

(c) *the length of time that the trade or business operation was continued after acquisition; and*

(d) *whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.*

(7) *A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:*

(a) *If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).*

(b) *If the person is not an employer, the person is subject to a civil penalty of not more than \$5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).*

(c) *In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:*

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

(8) *For the purposes of this section, the following definitions apply:*

(a) *"Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.*

(b) *"Person" includes an individual, trust, estate, partnership, association, company, or corporation.*

(c) *"Trade or business" includes an employer's workforce.*

(9) *The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.*

(10) *This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."*

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by ~~15-30-209~~ in subsection (2).

(2) *The department may assess penalties and interest under this section as follows:*

(a) a penalty of \$25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of \$50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of \$100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) *The department may waive all or any portion of any penalties and interest assessed pursuant to subsection (2).*

~~(2)(4)~~ (4) *There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in*

that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5);~~ may only be used by the department ~~or its delegate~~ *only* to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

~~(3)(5)~~ All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid taxes. (1) The department, ~~or its delegate pursuant to 39-51-301(5), has authority to~~ *may* enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and ~~adhered to~~ *followed*. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and *the* penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, ~~or its delegate pursuant to 39-51-301(5);~~ may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company ~~referred to in 39-51-1105,~~ or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or *the* assessment became due, whichever is later, or ~~it~~ *the action* is barred.

(4) The department, ~~or its delegate pursuant to 39-51-301(5);~~ may pursue its remedy under 39-51-1304; or this section, or both."

Section 12. Section 39-51-2102, MCA, is amended to read:

"39-51-2102. Week Commencement of week of unemployment — ~~when deemed to commence.~~ An individual's week of unemployment ~~shall be deemed to commence~~ *commences* only after ~~his registration at an unemployment office~~ *the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual's local job service,* except as the department may by ~~regulation~~ *rule* otherwise prescribe."

Section 13. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim ~~at~~ and has ~~continued to report at an employment office~~ *filed continued claims* in accordance with rules that the department may

~~prescribe, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;~~

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has ~~registered for work~~ *filed or reopened a claim for unemployment insurance benefits* and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine ~~the~~ *a claim for benefits*, and; on the basis of the *deputy's findings of fact* ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ *shall* determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the~~

~~administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.~~

~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. Coordination instruction. If both House Bill No. 760 and [this act] are passed and approved, then [section 118] of House Bill No. 760, amending 39-51-1301, is void.

Section 16. Effective dates. (1) [Sections 1 through 8, sections 10 through 15, and this section] are effective on passage and approval.

(2) [Section 9] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 467

[HB 182]

AN ACT GENERALLY REVISING AND CONSOLIDATING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; DISTINGUISHING BETWEEN DEPARTMENT AND BOARD OR PROGRAM DUTIES REGARDING LICENSURE, EXAMINATION, AND FEES; CLARIFYING THE DETERMINATION AND DISTRIBUTION OF FEES FOR LICENSURE, EXAMINATION, AND ADMINISTRATIVE COSTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO HANDLE CERTAIN TASKS RELATED TO BOARDS, INCLUDING MONITORING OF LICENSING BOARDS' CASH BALANCES AND HIRING SERVICES FOR BOARDS; ALLOWING FOR FEE ADJUSTMENTS; REQUIRING STANDARDIZATION OF FORMS; INCLUDING DEPARTMENT PROGRAMS UNDER CERTAIN PROVISIONS APPLICABLE TO BOARDS; SETTING UNIFORM STANDARDS FOR LICENSE RENEWALS, INCLUDING RENEWAL PERIODS; REVISING CERTAIN NOTIFICATION PERIODS; REMOVING

SPECIFIC BOARD OR PROGRAM REFERENCES IF DUTIES ARE ASSIGNED TO THE DEPARTMENT OR PROVIDED GENERALLY TO ALL BOARDS; REMOVING THE REQUIREMENT TO PUBLISH AN ANNUAL LIST OF SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; REMOVING CERTAIN SPECIFIED LICENSING PERIODS; REMOVING THE PUBLICATION REQUIREMENT FOR OUTFITTERS' NAMES AND ADDRESSES; REPEALING CERTAIN BOARD-SPECIFIC OR PROGRAM-SPECIFIC REFERENCES TO LICENSURE, EXAMINATIONS, AND FEES; AMENDING SECTIONS 23-3-501, 23-4-105, 23-4-201, 27-12-206, 33-30-1013, 37-1-101, 37-1-104, 37-1-105, 37-1-121, 37-1-130, 37-1-131, 37-1-134, 37-1-141, 37-1-302, 37-1-306, 37-1-307, 37-2-101, 37-3-203, 37-3-211, 37-3-301, 37-3-305, 37-3-306, 37-3-307, 37-3-309, 37-3-311, 37-3-313, 37-3-341, 37-3-342, 37-3-343, 37-3-344, 37-3-347, 37-4-301, 37-4-307, 37-4-402, 37-4-406, 37-6-304, 37-7-104, 37-7-302, 37-7-321, 37-7-605, 37-7-606, 37-8-102, 37-8-202, 37-8-204, 37-9-304, 37-9-305, 37-10-302, 37-10-304, 37-11-201, 37-11-304, 37-12-201, 37-12-302, 37-13-302, 37-14-306, 37-16-202, 37-16-405, 37-17-302, 37-18-202, 37-19-401, 37-19-702, 37-19-807, 37-20-301, 37-20-302, 37-22-201, 37-22-301, 37-22-302, 37-23-101, 37-23-202, 37-23-203, 37-23-206, 37-24-202, 37-24-303, 37-24-310, 37-25-201, 37-26-201, 37-26-403, 37-27-105, 37-27-210, 37-28-104, 37-28-202, 37-29-306, 37-31-203, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323, 37-34-201, 37-34-305, 37-35-103, 37-40-302, 37-42-304, 37-42-308, 37-47-101, 37-47-201, 37-47-304, 37-50-304, 37-51-204, 37-51-303, 37-51-305, 37-51-603, 37-53-104, 37-60-304, 37-66-304, 37-67-303, 37-67-321, 37-68-201, 37-68-304, 37-68-305, 37-68-307, 37-68-310, 37-68-312, 37-69-304, 37-69-305, 37-69-306, 37-69-401, 37-72-102, 37-72-202, 37-72-305, 37-76-109, 50-16-201, 50-74-312, AND 80-8-207, MCA; REPEALING SECTIONS 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3-501, MCA, is amended to read:

“23-3-501. Licenses — fees. (1) The board may issue a license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, ~~commensurate with costs for that license,~~ as provided in 37-1-134, ~~as set by the board.”~~

Section 2. Section 23-4-105, MCA, is amended to read:

“23-4-105. Authority of board. The board shall, ~~subject to 37-1-101 and 37-1-121,~~ license and regulate racing and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged in Montana, ~~it~~ *the board* shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board ~~should~~ *shall* consider both the economic and safety impacts on the existing racing and breeding industry.”

Section 3. Section 23-4-201, MCA, is amended to read:

“23-4-201. Licenses. (1) ~~It is unlawful for a~~ *A person to may not* hold a race meet, including simulcast race meets under the parimutuel system, in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file *with the department* an application ~~with the department which shall~~ *that must* set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet ~~shall~~ *must* be licensed and charged an annual fee set by the board, ~~which shall~~. *The annual fee must* be paid to the department and used for expenses of administering this chapter, ~~subject to 37-1-101(6).~~ Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) ~~Applications~~ *An application* to hold a race ~~meets shall~~ *meet must* be submitted to the department, and the board shall act on the ~~applications~~ *application* within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race ~~meets~~ *meet comply with* the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.”

Section 4. Section 27-12-206, MCA, is amended to read:

“27-12-206. Funding. (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under ~~37-12-307~~ *37-1-134* is due. An unpaid assessment bears a late charge fee of \$25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under ~~37-12-307~~ *37-1-134* with regard to a chiropractic physician's annual license fee. However, nothing in this section may be interpreted to conflict with *37-1-138*."

Section 5. Section 33-30-1013, MCA, is amended to read:

"33-30-1013. Coverage required for services provided by nurse specialists. A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by a nurse specialist, as specifically listed in *37-8-202(5)*, if health care services that nurse specialists are licensed to perform are covered by the contract."

Section 6. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry ~~may~~ *shall*:

(1) ~~establish and~~ provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, ~~taking receiving and processing routine applications for licenses as defined by a board, issuing and denying licenses granted by the boards, renewing routine licenses as defined by a board, disciplining licensees, registering, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;~~

(2) standardize *policies and procedures* and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for ~~the~~ *all* meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) ~~contract for or~~ administer and grade examinations required by each board ~~or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;~~

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards *and programs* on an equitable basis as determined by the department;

(7) adopt rules setting *administrative fees and* expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's ~~licensing~~ board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) *provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;*

(10) *monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and*

(11) *establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."*

Section 7. Section 37-1-104, MCA, is amended to read:

"37-1-104. Standardized forms. ~~It is the responsibility of the~~ The department ~~whenever possible to shall~~ adopt standardized application, license, and other forms and processes to be used by the boards and department programs ~~within the department~~. The standardization is to streamline processes, expedite services, reduce costs, and waste, and the use of out-of-date forms and facilitate automated printing and computerization."

Section 8. Section 37-1-105, MCA, is amended to read:

"37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all ~~licensing boards and department programs within the department~~ require all applicants ~~each applicant~~ for licensure or renewal to report any legal or disciplinary ~~actions~~ action against ~~them~~ the applicant that ~~relate~~ relates to the propriety of the applicants' ~~applicant's~~ practice of or their fitness to practice the profession or occupation for which ~~they seek~~ the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license."

Section 9. Section 37-1-121, MCA, is amended to read:

"37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings ~~before each board within the department~~ whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) *establish the qualifications of and* hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to *establish the qualifications of, hire, or terminate* personnel. *The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.*

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner."

Section 10. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definition. As used in this part, "board" means each board in ~~this title~~ the following definitions apply:

(1) *"Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.*

(2) *"Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is allocated administratively attached to the department of labor and industry as provided in 2-15-121.*

(3) *"Board fee" means:*

(a) *a fee established by the board to cover program area costs as provided in 37-1-134; and*

(b) *any other legislatively prescribed fees specific to boards and department programs.*

(4) *"Department" means the department of labor and industry established in 2-15-1701.*

(5) *"Department program" means a program administered by the department pursuant to this title and not affiliated with a board.*

(6) *"Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.*

(7) *"Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.*

(8) *"License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.*

(9) *"Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."*

Section 11. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. ~~Each~~ *A quorum of each board within the department shall:*

(1) *set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its the board's jurisdiction;*

(2) *sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its the board's jurisdiction. The hearings must be conducted by a hearing hearings examiner when required under 37-1-121(4).*

(3) *suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;*

(4) *pay to the department its the board's pro rata share of the assessed costs of the department under 37-1-101(6);*

(5) *consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.*

(6) *A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.*

(7) *The board or the department program may:*

(a) *establish the qualifications of applicants to take the licensure examination;*

(b) *determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;*

(c) *examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and*

(d) *require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.*

(8) *A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."*

Section 12. Section 37-1-134, MCA, is amended to read:

~~"37-1-134. Licensing boards to establish fees~~ Fees commensurate with costs. ~~All Each licensing boards board~~ allocated to the department shall set board fees ~~reasonably~~ related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, ~~each board within~~ the department may establish *standardized* fees, including but not limited to fees for ~~program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education~~ administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. ~~Board~~ Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the ~~board~~ department. Each board and department program shall maintain records sufficient to support the fees charged for each program area."

Section 13. Section 37-1-141, MCA, is amended to read:

~~"37-1-141. Nonrenewal of license for three years~~ License renewal — lapse — expiration — termination. (1) *The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.*

(2) *To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.*

(3) *A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.*

(4) *A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.*

(5) *To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:*

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) *(a) A licensee who practices with a lapsed license is not considered to be practicing without a license.*

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) *The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.*

(8) *Unless otherwise provided by statute or rule, a lapsed an occupational or professional license that is not renewed within 3 2 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated reactivated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.*

(9) *The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.*

(10) *This section may not be interpreted to conflict with 37-1-138."*

Section 14. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

- (b) the status of compliance with a stipulation or order of the board;
- (c) whether a license should be granted, denied, or conditionally issued; or
- (d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, ~~regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.~~

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 15. Section 37-1-306, MCA, is amended to read:

"37-1-306. Continuing education. A board *or, for programs without a board, the department* may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education."

Section 16. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

- (a) hold hearings as provided in this part;
- (b) issue subpoenas *requiring the attendance of witnesses or the production of documents* and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, ~~issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e); and must be~~ signed by the ~~presiding officer~~ *a member of the board*. Subpoenas may be enforced as provided in 2-4-104.
- (c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;
- ~~(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.~~
- ~~(e)~~(d) establish a screening panel ~~that determines~~ *to determine* whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

~~(f)~~(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding ~~its~~ *the board's* licensees and license applicants and regarding possible unlicensed practice.

[(3)] Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may

provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 17. Section 37-2-101, MCA, is amended to read:

“37-2-101. Definitions. As used in this part, the following definitions apply:

(1) “Community pharmacy”, when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) “Device” means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) “Drug” has the same meaning as provided in 37-7-101.

(4) “Drug company” means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; ~~but the~~. *The* term does not include a pharmacy.

(5) “Medical practitioner” means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

(6) “Person” means any individual and any partnership, firm, corporation, association, or other business entity.

(7) “Pharmacy” has the same meaning as provided in 37-7-101.

(8) “State” means the state of Montana or any political subdivision of the state.”

Section 18. Section 37-3-203, MCA, is amended to read:

“37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensees *who are* subject to the jurisdiction of the board *and* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

~~(5) select an executive secretary to be hired by the department to:~~

~~(a) provide services to the board in connection with the board’s duties under this chapter;~~

~~(b) assist in prosecution and matters of license discipline under this chapter;~~
and

~~(c) administer the board’s affairs; and~~

~~(6)~~(5) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.”

Section 19. Section 37-3-211, MCA, is amended to read:

“37-3-211. Executive secretary. To perform the services provided for in ~~37-3-203(5)~~ to the board in connection with the board’s duties under this chapter, assist in prosecution and matters of license discipline, and administer the board’s affairs, the department shall hire an executive secretary selected by the board.”

Section 20. Section 37-3-301, MCA, is amended to read:

“37-3-301. License required — kinds of certificates. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four forms of certificates of licensure under the board’s seal; *which include* the physician’s certificate, the restricted certificate, the temporary certificate, and the telemedicine certificate issued in accordance with 37-3-341 through ~~37-3-345~~ and ~~37-3-347 through~~ 37-3-349. The physician’s certificate and the restricted certificate must be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) a physician’s certificate, which is subject to renewable registration in accordance with department rules;

(b) a restricted certificate;

(c) a temporary certificate, which is subject to specifications and limitations imposed by the board; and

(d) a telemedicine certificate.”

Section 21. Section 37-3-305, MCA, is amended to read:

“37-3-305. Qualifications for licensure. (1) Except as provided in subsections (4) and (5), a person may not be granted a physician’s license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program;

(d) has ~~had submitted~~ a completed application ~~file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board;~~ and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

- (a) is of good moral character, as determined by the board;
 - (b) is a graduate of an approved medical school as defined in 37-3-102;
 - (c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program; and
 - (d) is able, in the opinion of the board, to communicate in the English language.
- (4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;
 - (b) is a resident in good standing with the Montana family practice residency program; and
 - (c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.
- (5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;
 - (b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;
 - (c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;
 - (d) makes application to the department on a *an approved form prescribed by the board*; and
 - (e) pays a fee set by the board, as provided in 37-3-308."

Section 22. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

- (a) passing an *approved examination given and graded by the department*, subject to 37-1-101;
- (b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or
- (c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws

of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) ~~No~~ *An* applicant who applies for a license on the basis of an examination and fails the examination may *not* be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before ~~will~~ *may* be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 ~~will~~ *must* be certified in the same manner as provided ~~above~~ *in this section* for physicians.”

Section 23. Section 37-3-307, MCA, is amended to read:

“37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination ~~given and graded by the department, subject to 37-1-101~~ *prescribed by the board;*

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or ~~its~~ *the* equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary certificate may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary certificate subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary certificate to a person who has committed unprofessional conduct. The issuance of a temporary certificate does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary certificate. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant."

Section 24. Section 37-3-309, MCA, is amended to read:

"37-3-309. Application for license. (1) A person desiring a license to practice medicine shall ~~make application~~ *apply* to the department, ~~verified by oath and in a form prescribed by the board on an approved form.~~ The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department's inquiry.

~~(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a certificate until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter."~~

Section 25. Section 37-3-311, MCA, is amended to read:

"37-3-311. Examination. (1) ~~Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.~~

~~(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.~~

~~(3)(1)~~ An applicant who is a graduate of a foreign medical school ~~shall~~ *is required* to have passed an examination given by the education council for foreign medical graduates or its successor.

~~(4)(2)~~ The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for ~~this the examination.~~

~~(5)(3)~~ The board may use other Montana physicians to assist in preparing the examination.

~~(6)(4)~~ A person may not be granted a license to practice medicine if ~~he the person~~ fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements ~~in his on the~~ first examination, ~~he the applicant~~ may be reexamined not more than two additional times on each of the component parts of the examination. ~~An examination fee shall be charged for each additional examination.~~ If an applicant is prevented through no fault of ~~his own the applicant's~~ from taking a scheduled examination, ~~he the applicant~~ may, within 2 years, be examined without submitting a new application."

Section 26. Section 37-3-313, MCA, is amended to read:

~~"37-3-313. Renewal fees — failure to pay — limiting~~ *Limiting authority to impose renewal fees.* (1) ~~In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a renewal fee as prescribed by the board.~~

~~(2) The payments for renewal must be made prior to the expiration date of the license, as set forth in a department rule. The department shall mail renewal notices before the renewal is due.~~

~~(3) Except as provided in 37-1-138, in case of default in the payment of the renewal fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying license to practice medicine may be considered lapsed by the board.~~

~~(4) A license or renewal fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."~~

Section 27. Section 37-3-341, MCA, is amended to read:

~~"37-3-341. Legislative findings.~~ The Montana legislature previously found, in 37-3-101, that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing patterns of medical practice, medicine is increasingly being practiced by electronic means across state lines. Although access to technological advances is in the public interest, the legislature also finds that regulation of the practice of medicine across state lines is necessary to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who ~~enter the state by electronic or other technological means to~~ practice medicine for compensation on patients inside Montana are seeking the benefit and protection of the laws of Montana and are subject to the licensure

and regulatory requirements provided in 37-3-341 through *37-3-345 and 37-3-347 through 37-3-349.*"

Section 28. Section 37-3-342, MCA, is amended to read:

"37-3-342. Definition — scope of practice allowed by telemedicine certificate. (1) As used in 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349,* "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349,* telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative;

(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or

(f) a communication from a physician located outside Montana to a patient in Montana in collaboration with a physician or other health care provider licensed to practice medicine in Montana."

Section 29. Section 37-3-343, MCA, is amended to read:

"37-3-343. Practice of telemedicine prohibited without certificate — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349.*

(2) A telemedicine certificate authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine certificate pursuant to 37-3-345(2).

(3) A telemedicine certificate authorizes an out-of-state physician to practice only telemedicine. A telemedicine certificate does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301, ~~and 37-3-341 through 37-3-345, and 37-3-347 through~~ 37-3-349, in violation of the terms or conditions of that certificate, in violation of the scope of practice allowed by the certificate, or without a physician's certificate of licensure issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 30. Section 37-3-344, MCA, is amended to read:

"37-3-344. Application for telemedicine certificate. (1) A person desiring a telemedicine certificate shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a certificate fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through *37-3-345 and 37-3-347 through* 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board."

Section 31. Section 37-3-347, MCA, is amended to read:

"37-3-347. Reasons for denial of certificate — alternative route to licensed practice. (1) The board may deny an application for a telemedicine certificate if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a certificate required by 37-3-341 through *37-3-345 and 37-3-347 through* 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter;
or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine certificate provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

Section 32. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — ~~qualifications~~ Qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination

in order to be licensed. The examination must consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

~~(2) Acceptance by the board of a written and practical examination must be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. The examination must include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.~~

~~(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures.~~

~~(4) Applicants for licensure shall submit an application, which that must include, when required:~~

~~(a)(1) certification of successful completion of the national board written examination;~~

~~(b)(2) certification of successful completion of a regional board practical examination;~~

~~(c)(3) three affidavits of good moral character;~~

~~(d)(4) a certificate of graduation from a board-approved dental school; and~~

~~(e) an examination fee commensurate with costs and set by the board;~~

~~(f)(5) an application fee, commensurate with costs and set by the board;~~

~~(g) a recent photograph of the applicant; and~~

~~(h) copies of all other state licenses that are held by the applicant.~~

~~(5) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.~~

~~(6) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.~~

~~(7) The board is authorized to adopt necessary and reasonable rules governing application procedures."~~

Section 33. Section 37-4-307, MCA, is amended to read:

"37-4-307. Renewal fee — default Notice of name and address change — local fees prohibited. (1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

~~Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.~~

~~(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.~~

~~(3) (a) Except as provided in 37-1-138, in case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.~~

~~(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.~~

~~(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:~~

~~(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;~~

~~(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and~~

~~(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.~~

~~(4)(1) Each dentist shall give the board notice of any change in name, address, or status within 30 10 days of the change.~~

~~(5)(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."~~

Section 34. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules ~~it considers proper adopted by the board~~ and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. ~~The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.~~

~~(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing~~

~~service practical examination. The board is authorized to make rules governing examination procedures.~~

~~(5)(3) Applicants~~ *An applicant* for licensure shall submit an application; ~~which that~~ must include, when required:

(a) certification of successful completion of the national board ~~written~~ *written* examination;

(b) certification of successful completion of a regional board ~~practical~~ *practical* examination;

(c) two affidavits of good moral character;

(d) *a* certificate of graduation from a board-approved dental hygiene school; ~~and~~

~~(e) an examination fee commensurate with costs and set by the board;~~

~~(f)(e)~~ an application fee, ~~commensurate with costs and set by the board;~~

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

~~(6) Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.~~

~~(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.~~

~~(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."~~

Section 35. Section 37-4-406, MCA, is amended to read:

"37-4-406. ~~Renewal fee — default — forfeiture of license~~ *Notice of name and address change — local fees prohibited.* (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) ~~Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.~~

(3) ~~Except as provided in 37-1-138, in case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.~~

(a) ~~The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.~~

(b) ~~The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.~~

~~(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:~~

(i) ~~renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;~~

(ii) ~~the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in~~

~~which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and~~

~~(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.~~

~~(4)(1)~~ Each dental hygienist shall give the board notice of any change in name, address, or status within ~~30~~ 10 days of the change.

~~(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.~~

~~(6)(2)~~ A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter."

Section 36. Section 37-6-304, MCA, is amended to read:

~~"37-6-304. Designations on license — recording — renewal — display.~~ (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

~~(2) Licenses must be recorded by the~~ *The department shall record licenses* the same as other medical licenses.

~~(3) Licenses must be renewed on a date set by department rule.~~

~~(4) A license renewal fee set by the board must be paid on a date set by department rule.~~

~~(5) The department shall mail renewal notices prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the renewal fee is not paid on or before the renewal date, the board may consider the license lapsed."~~

Section 37. Section 37-7-104, MCA, is amended to read:

~~"37-7-104. Qualifications of employee hired to assist board.~~ A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall *must* be:

~~(1) a citizen of the United States and a resident of this state; and~~

~~(2) a pharmacist registered under this chapter, with at least 5 years of practical experience."~~

Section 38. Section 37-7-302, MCA, is amended to read:

~~"37-7-302. Examination — qualifications — fees — reciprocity~~ *Qualifications — display of license.* (1) ~~The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.~~

~~(2) The fee for an examination must be set by the board at a figure commensurate with costs. The fee may in the discretion of the board be returned to applicants not taking the examination.~~

~~(3)(1)~~ To be entitled to examination as a pharmacist, the applicant must be of good moral character and must have graduated and received the first professional undergraduate degree from the school of pharmacy of the

university of Montana-Missoula or ~~from~~ have received an accredited pharmacy degree program that has been approved by the board. However, an applicant may not receive a registered pharmacist's license until the applicant has complied with the internship requirements established by the board.

~~(4)(2)~~ Each person licensed and registered under this chapter must receive from the department an appropriate ~~certificate license attesting the fact, which.~~ The license must be conspicuously displayed at all times in the place of business."

Section 39. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license — display. ~~(1)~~ The board shall provide for the original certification and renewal by the board of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board, ~~and on application on a prescribed form prescribed by the board,~~ and on the payment of an original certification fee prescribed by the board, the board shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. ~~The renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the fee is due increases the renewal fee as prescribed by the board.~~ The license must be displayed in a conspicuous place in the pharmacy for which it is issued ~~and expires on the date set by board rule. It is unlawful for a~~ A person ~~to may not~~ conduct operate a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

~~(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1."~~

Section 40. Section 37-7-605, MCA, is amended to read:

"37-7-605. Out-of-state wholesale drug distributor licensing requirements. ~~(1) It is unlawful for an~~ An out-of-state wholesale drug distributor ~~to may not~~ conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on ~~a an~~ approved form furnished by the board.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license."

Section 41. Section 37-7-606, MCA, is amended to read:

"37-7-606. Issuance of licenses Licenses. The license for wholesale drug distributors is effective during the period specified by department rule. ~~An application for renewal of a license must be mailed to each licensee at least 30 days prior to the renewal date, and if the renewal application and the fee are not mailed by the renewal date, the license is void upon its expiration date."~~

Section 42. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who *in an assisted living facility* uses standardized procedures in the administration of drugs, as defined in 37-7-101, ~~in an assisted living facility~~ that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. ~~Practical~~ *The practice of practical nursing practice* uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 43. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and shall elect from among the nine members a president and a secretary. ~~The board shall;~~

(b) hold other meetings when necessary to transact its business. ~~The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.~~

~~(2) The board may make rules necessary to administer this chapter. The board shall;~~

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter. ~~It shall;~~

(d) provide for surveys of schools at times ~~it~~ *the board* considers necessary. ~~It shall;~~

(e) approve programs that meet the requirements of this chapter and of the board. ~~The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall;~~

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. ~~It shall;~~

(g) cause the prosecution of persons violating this chapter ~~and~~. *The board* may incur necessary expenses for prosecutions.

~~(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.~~

(h) *adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.*

(i) *establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the renewal fee to be commensurate with the cost of the program.*

~~(4)~~(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

~~(5) (a) The board may~~

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or ~~its~~ *the* equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

~~(b) The board shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.~~

~~(6) The board may~~

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

~~(7) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.~~

~~(8) The board may~~

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) *adopt rules necessary to administer this chapter; and*

~~(9)(f) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."~~

Section 44. Section 37-8-204, MCA, is amended to read:

"37-8-204. Executive director. (1) The department shall hire an executive director to provide services to the board in connection with the board's duties of:

~~(1)(a)~~ (a) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

~~(2)(b)~~ (b) evaluating and approving courses for affiliation of student nurses; and

~~(3)(c)~~ (c) reviewing qualifications of applicants for licensure.

(2) *The department shall hire as the executive director an individual who:*

(a) *is a graduate of an approved school of nursing and who has at least a master's degree with postgraduate courses in nursing;*

(b) *is licensed as a registered professional nurse in Montana; and*

(c) *has experience in teaching or administration in an approved school of nursing and who has completed at least 3 years in the clinical practice of nursing."*

Section 45. Section 37-9-304, MCA, is amended to read:

"37-9-304. Fees. (1) Each person who applies for licensure, ~~whether by waiver, examination, or reciprocity,~~ shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. ~~A license expires on a date set by department rule and must be renewed upon timely payment of the license fee.~~

(3) ~~The fee for issuing a duplicate license must be fixed by the board."~~

Section 46. Section 37-9-305, MCA, is amended to read:

"37-9-305. Renewal of registration and license License — grounds for discipline. ~~Each holder of a nursing home administrator's registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license, except as may be otherwise provided in 37-1-138. Renewals of registrations or licenses A license must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal accordance with this chapter, the board may find grounds for discipline."~~

Section 47. Section 37-10-302, MCA, is amended to read:

"37-10-302. Examination — qualifications Qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. ~~If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~

(2) A person is not eligible to receive a certificate of registration unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a certificate of registration unless that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a certificate of registration shall file ~~an~~ a completed application, ~~in the manner prescribed by the board, on a form provided by the department~~ and pay a fee prescribed by the board.

(5) ~~A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a certificate of registration signed by the members of the board."~~

Section 48. Section 37-10-304, MCA, is amended to read:

“37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents ~~must~~ *shall* satisfactorily complete a course referred to in subsection (1)(a) and ~~must~~ *shall* pass an examination ~~as provided in subsection (1)(d).~~

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. ~~The course must also be approved by the board.~~

~~(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.~~

(2) (a) Each person desiring to ~~commence~~ the practice of optometry shall:

(i) pass an examination, of the ~~international~~ association of *regulatory* boards of examiners ~~in of~~ optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. ~~The course and examination must also be approved by the board.~~

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

~~(c) The board shall:~~

~~(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and~~

~~(ii) issue a certificate to an applicant who passes the examination.”~~

Section 49. Section 37-11-201, MCA, is amended to read:

“37-11-201. General powers — rulemaking power — records. (1) The board may:

~~(a)(1) adopt rules to carry implement this chapter into effect;~~

~~(b) grant, suspend, and revoke licenses;~~

~~(c)(2) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and~~

~~(d)(3) take any other disciplinary action necessary to protect the public.~~

~~(2) The board shall:~~

~~(a) examine applicants for licenses at reasonable places and times determined by the board;~~

~~(b) review the qualifications of applicants who are approved for examination for licensure;~~

~~(c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and~~

~~(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, subject to the provisions of 37-1-138.~~

~~(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.~~

~~(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.~~

~~(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."~~

Section 50. Section 37-11-304, MCA, is amended to read:

"37-11-304. Application for examination — fee. (1) A person who desires to be licensed as a physical therapist or a physical therapist assistant shall apply to the department ~~in writing~~, on a form furnished by the department. The person shall:

~~(a) provide evidence under oath, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303; and~~

~~(b) pay to the department at the time of filing the application a fee established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).~~

~~(2) Anyone failing to pass the required examination on the first attempt is entitled to take a second examination and, if the second examination is failed, to take a third examination. A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination."~~

Section 51. Section 37-12-201, MCA, is amended to read:

"37-12-201. Organization of board — ~~meetings~~ — powers and duties. (1) The board shall:

(1) elect annually a president, vice president, and secretary-treasurer from its membership;:

~~(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates.~~

~~(2) The board shall:~~

(a)(2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

~~(b) adopt a seal that must be affixed to licenses issued;~~

~~(e)(3) make a schedule of minimum educational requirements, which that~~ are without prejudice, partiality, or discrimination; as to the different schools of chiropractic;

~~(d)(4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and the display of license licenses, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.~~

~~(e)(5) make determinations of the qualifications of applicants under this chapter; and~~

~~(f) administer the examination for licensure under this chapter;~~

~~(g) establish and collect fees, fines, and charges as provided in this chapter;~~

~~(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and~~

~~(i)(6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.~~

~~(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection."~~

Section 52. Section 37-12-302, MCA, is amended to read:

"37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall ~~make application apply~~ to the department; on the ~~a department~~ form and in the manner prescribed by the board. Each applicant must be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, ~~in which the applicant has attended a course of study of 4 school years of not less than 9 months each.~~ The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. Application must be made in writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board. ~~A fee must also be paid for a subsequent examination and application.~~

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement."

Section 53. Section 37-13-302, MCA, is amended to read:

“37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall ~~make application apply to the board for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board.~~ A fee prescribed by the board shall *must* accompany the application.

(2) ~~A person making application~~ *An applicant* shall furnish to the board evidence that ~~he the applicant~~ is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of ~~an approved~~ *a* school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination ~~prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists or its successor.”~~

Section 54. Section 37-14-306, MCA, is amended to read:

“37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant ~~must be required to~~ *shall* demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 ~~shall and this section must specify~~ x-ray procedures, defined and established by rule, that may be performed by the holder. Permits ~~shall be~~ *are* valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

~~(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.~~

~~(3)(2)~~ *Applicants* *An applicant* meeting minimum requirements for licensure ~~shall must~~ be issued a temporary permit to work as a radiologic technologist. This temporary permit ~~shall expire~~ *expires* 15 days after the date of first opportunity for examination.

~~(4)(3)~~ The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided *to the board* that ~~such a~~ *temporary* permit is necessary because of a regional hardship or emergency condition and that ~~such person~~ *the prospective recipient of a temporary permit* is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

~~(5)~~(4) Each applicant for a permit must:

- (a) be of good moral character;
- (b) be at least 18 years of age; and
- (c) not be addicted to intemperate use of alcohol or narcotic drugs.”

Section 55. Section 37-16-202, MCA, is amended to read:

“37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

~~(3) suspend or revoke licenses under this chapter;~~

~~(4) designate the time and place for examining applicants for license and supervise and administer the examination;~~

~~(5)~~(3) adopt rules necessary to carry out this chapter;

~~(6)~~(4) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids;

~~(7) prepare examinations required by the chapter;~~

~~(8)~~(5) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;

~~(9)~~(6) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, ~~37-16-403~~, 37-16-405, ~~37-16-407~~, 37-16-408, and 37-16-411. Rules adopted by the board may include but are not limited to rules defining the term “related devices” and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, ~~37-16-403~~, 37-16-405, ~~37-16-407~~, 37-16-408, and 37-16-411.

~~(10)~~(7) establish and adopt minimum requirements for the form of bills of sale and receipts.”

Section 56. Section 37-16-405, MCA, is amended to read:

“37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take ~~the a~~ practical examination ~~under 37-16-403~~ may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and commensurate with the cost of administering the license ~~and related functions of the board and~~ verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser’s license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) ~~(a)~~ If a person who holds a trainee license takes and fails to pass the practical examination during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. ~~In no event may more~~ *More* than one renewal ~~be~~ *is not* permitted.

~~(b) The fee for renewal must be set by the board commensurate with the cost of administering the license and related functions of the board.~~

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 57. Section 37-17-302, MCA, is amended to read:

"37-17-302. ~~Application — qualifications~~ *Qualifications.* ~~(1) Application for examination for licensure as a psychologist must be made on forms prescribed by the board.~~

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence ~~by oath~~ that the person:

~~(a)~~(1) is 18 years of age or older;

~~(b)~~(2) is of good moral character;

~~(c)~~(3) (a) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

~~(ii)~~(b) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has

successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii)(c) has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the board; and

(d)(4) has completed at the time of application a minimum of 2 years of supervised experience in the practice of psychology. One year of this experience must be postdoctoral but may not include more than 6 months of supervised research, teaching, or a combination of both."

Section 58. Section 37-18-202, MCA, is amended to read:

~~"37-18-202. Powers of board and department — examinations~~
Rulemaking. (1) The board may adopt rules ~~and orders~~ necessary for the performance of its duties, including but not limited to:

- (a) ~~prescribing of forms for application for examination and license;~~
- (b) ~~preparation of examinations; and~~
- (c) ~~clarifying the use of support personnel and the provision of emergency services.~~

(2) ~~The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses to carry out the purposes of this chapter."~~

Section 59. Section 37-19-401, MCA, is amended to read:

~~"37-19-401. License required — display of license — renewal — penalty for late renewal.~~ (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) ~~A mortuary license expires on the date set by department rule and may be renewed upon payment of a fee set by the board.~~

(3) ~~The board may set a penalty for late renewal of a mortuary license."~~

Section 60. Section 37-19-702, MCA, is amended to read:

~~"37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal.~~ (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, ~~beginning July 1, 1993.~~ The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board, ~~which includes.~~ *The fee must include* the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) ~~The board may set a penalty fee for late renewal of a license.~~

(4)(3) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

~~(5)~~(4) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.”

Section 61. Section 37-19-807, MCA, is amended to read:

“37-19-807. Powers and duties of board. The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of this part;

(3) adopt rules ~~and forms~~ to enforce the provisions of this part;

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for ~~the a period of time that~~ the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.”

Section 62. Section 37-20-301, MCA, is amended to read:

“37-20-301. Utilization plan required — contents — approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;

(b) the nature and location of the physician’s medical practice;

(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if ~~it~~ *the board* finds that the practice of the physician assistant-certified is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(4) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member."

Section 63. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval and fee—renewal of license—renewal fee. (1) A utilization plan *must be submitted for approval, and a fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.*

~~(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.~~

~~(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.~~

~~(4) A license renewal fee set by the board must be paid at the time the license is renewed.~~

~~(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed.~~

~~(7) Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."~~

Section 64. Section 37-22-201, MCA, is amended to read:

"37-22-201. Duties of board. The board shall:

~~(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;~~

~~(2)(1) shall~~ recommend prosecutions for violations of 37-22-411 and 37-23-311 to the attorney general or the appropriate county attorney, or both;

~~(2) annually publish a list of the names and addresses of all persons who are licensed social workers;~~

~~(4) establish requirements for continuing education that are a condition of license renewal;~~

~~(5)~~(2) shall meet at least once every 3 months to perform the duties described in *Title 37, chapters 1, 22, and 23* ~~this section~~. The board may, once a year by a consensus of ~~its~~ board members, determine that there is no necessity for a board meeting.

~~(6) distribute a copy of the ethical standards to the certified masters of social work; and~~

~~(7)~~(3) shall adopt rules that set professional, practice, and ethical standards for ~~licensed masters of social work~~ workers and professional counselors and ~~such~~ other rules as may be reasonably necessary for the administration of *chapter 23* and this chapter; and

(4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued."

Section 65. Section 37-22-301, MCA, is amended to read:

"37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination ~~prepared and administered prescribed by the board.~~

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

~~(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months.~~

~~(4)~~(3) An applicant who ~~has failed~~ fails the examination may reapply to take the examination.

~~(5)~~(4) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board."

Section 66. Section 37-22-302, MCA, is amended to read:

"37-22-302. Fees. (1) Each applicant for a license shall, upon submitting his an application to the board, pay an application fee set by the board. ~~equal to the cost of processing the application.~~

~~(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.~~

~~(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.~~

~~(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board."~~

Section 67. Section 37-23-101, MCA, is amended to read:

"37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated *by the board* under ~~37-23-103~~ *37-22-201* set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors."

Section 68. Section 37-23-202, MCA, is amended to read:

"37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily ~~completed~~:

(a) ~~completed~~ a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, ~~which~~ *that* resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) ~~completed~~ 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) ~~and~~ passed an examination prepared and administered by:

~~(i) the board, based on a national examination approved by the board;~~

~~(ii)(i)~~ the national board of certified counselors; or

~~(iii)(ii)~~ the national academy of certified clinical mental health counselors; and

(d) ~~completed~~ an application ~~form and process prescribed by the board.~~

(2) The board shall provide by rule for licensure of a person who possesses a ~~graduate degree that consists of a minimum of 45 semester hour graduate degree that is~~ hours primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years."

Section 69. Section 37-23-203, MCA, is amended to read:

"37-23-203. Issuance, effective date, and display *Display of license.*

(1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to

~~the date and fact of licensure. The license is effective on the date of issuance and must be renewed as provided in 37-23-205.~~

~~(2) The license received pursuant to 37-23-202 must be displayed in the registrant's place of business or employment."~~

Section 70. Section 37-23-206, MCA, is amended to read:

"37-23-206. Fees. ~~(1) Each applicant for a license shall, upon submitting his an application to the board, pay an application fee set by the board. commensurate with costs.~~

~~(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.~~

~~(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.~~

~~(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board."~~

Section 71. Section 37-24-202, MCA, is amended to read:

"37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

~~(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of applicants;~~

~~(c)(b) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter; and~~

~~(d) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and~~

~~(e)(c) adopt a seal by which the board shall authenticate its board proceedings.~~

(2) A copy of the proceedings, records, or acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, is prima facie evidence of the validity of the document.

~~(3) The department may employ persons it considers necessary to carry out the provisions of this chapter."~~

Section 72. Section 37-24-303, MCA, is amended to read:

"37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where the person completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the national board for certification in occupational therapy, inc. (NBCOT); and

(d) pass an examination as provided for in 37-24-304 prescribed by the board.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.”

Section 73. Section 37-24-310, MCA, is amended to read:

“37-24-310. Fees. ~~(1)~~ The board may adopt fees in accordance with 37-1-134 for:

- ~~(a)~~(1) applications for licensure;
- ~~(b)~~ examination;
- ~~(c)~~(2) initial license issuance; *and*
- ~~(d)~~ license renewal;
- ~~(e)~~ late license renewal; *and*
- ~~(f)~~(3) limited permit issuance.

~~(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).”~~

Section 74. Section 37-25-201, MCA, is amended to read:

“37-25-201. Powers and duties of the board. In addition to all other powers and duties conferred and imposed on the board by *Title 37, chapter 1*, *and* this chapter, the board shall:

~~(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307; and~~

~~(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this chapter.”~~

Section 75. Section 37-26-201, MCA, is amended to read:

“37-26-201. Powers and duties of board. The board shall:

- (1) adopt rules necessary or proper to administer and enforce this chapter;
- (2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;
- ~~(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;~~
- ~~(4)~~(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;
- ~~(5)~~(4) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, *and* licensure, *and* other administrative services;
- ~~(6)~~(5) approve naturopathic medical colleges as defined in 37-26-103;
- ~~(7)~~(6) issue certificates of specialty practice;
- ~~(8)~~(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301;

~~(9)~~(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301; and

~~(10)~~(9) adopt rules to implement the provisions in 37-1-138.”

Section 76. Section 37-26-403, MCA, is amended to read:

“37-26-403. Application for licensure — examination — temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial. At the board’s request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department’s investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. ~~The application for examination must be accompanied by the examination fee.~~ If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.”

Section 77. Section 37-27-105, MCA, is amended to read:

“37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in *Title 37, chapter 1, and this section*; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board’s duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules may include but are not limited to:

~~(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;~~

~~(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;~~

~~(c)~~(a) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

~~(d)~~(b) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

~~(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses consistent with the provisions in 37-1-138;~~

- ~~(f) the adoption of disciplinary standards for licensees;~~
- ~~(g)(c)~~ the development of standardized informed consent and reporting forms;
- ~~(h)(d)~~ the adoption of ethical standards for licensed direct-entry midwives;
- ~~(i)(e)~~ the adoption of supporting documentation requirements for primary birth attendants; and
- ~~(j)(f)~~ the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201.”

Section 78. Section 37-27-210, MCA, is amended to read:

“37-27-210. Fees. (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, ~~commensurate with costs.~~

~~(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.~~

~~(3)(2)~~ Before a license may be issued or renewed, an applicant shall pay a fee set by the board, ~~commensurate with costs.~~

~~(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.~~

~~(5)(3)~~ Fees are nonrefundable.”

Section 79. Section 37-28-104, MCA, is amended to read:

“37-28-104. Board powers and duties. (1) The board shall:

~~(a) examine,~~ license, grant temporary permits, and renew the licenses or permits of duly qualified applicants;

~~(b) establish examinations and passing scores for licensure under 37-28-202;~~

~~(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care.~~

(2) The board may:

~~(a) adopt rules necessary to implement the provisions of this chapter; and~~

~~(b) establish relicensing requirements and procedures that the board considers appropriate.”~~

Section 80. Section 37-28-202, MCA, is amended to read:

“37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written *an* application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association’s committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board. The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP".

Section 81. Section 37-29-306, MCA, is amended to read:

"37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule ~~and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, the~~ A denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card. ~~The license must bear on its face the address where the licensee's denturist services will be performed.~~

(2) ~~Applications~~ *An application* must be submitted on forms approved by the board ~~and a form~~ furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. ~~Applications~~ *An application* must be accompanied by the appropriate fees.

~~(3) This section may not be interpreted to conflict with 37-1-138."~~

Section 82. Section 37-31-203, MCA, is amended to read:

"37-31-203. Rulemaking powers. The board shall prescribe rules for:

- (1) the conduct of ~~its~~ board business;
- (2) the qualification, ~~examination,~~ and ~~registration~~ *licensure* of applicants to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring;
- (3) the regulation and instruction of apprentices and students;
- (4) the conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring for apprentices and students;
- (5) the qualification and ~~registration~~ *licensure* of applicants for booth rental licenses; and
- (6) generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 83. Section 37-31-302, MCA, is amended to read:

"37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation ~~except under a certificate of registration unless licensed~~ as a school.

(3) A person may not operate or manage a salon or shop without a license.

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a ~~certificate of registration and~~ license. The application must be accompanied by the ~~registration~~ license fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."

Section 84. Section 37-31-303, MCA, is amended to read:

"37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring shall file an application ~~prescribed by the board~~ *provided by the department* and pass the examination prescribed by the board ~~in order~~ to qualify for licensure. ~~The license must be renewed in accordance with the provisions of 37-31-322.~~"

Section 85. Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice:

(a) barbering, the person shall obtain a license to practice barbering from the department. ~~Before a person may practice;~~

(b) cosmetology, the person shall obtain a license to practice cosmetology from the department. ~~Before a person may practice;~~

(c) electrology, the person shall obtain a license to practice electrology from the department. ~~Before a person may practice;~~

(d) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology. ~~Before a person may practice; or~~

(e) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a ~~registered~~ *licensed* barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file ~~a written~~ *an* application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a ~~registered~~ *licensed* cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (3)(a) shall file ~~a written~~ *an* application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file ~~a written~~ *an* application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a ~~registered~~ *licensed* school of cosmetology or a ~~registered~~ *licensed* school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file ~~a written~~ *an* application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a ~~registered~~ *licensed* school of cosmetology or a ~~registered~~ *licensed* school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file ~~a written~~ *an* application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.”

Section 86. Section 37-31-305, MCA, is amended to read:

“37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a ~~registered~~ *licensed* school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher’s examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a ~~registered~~ school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher’s examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a ~~registered~~ school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher’s examination.

(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice barbering issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or

(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.

(8) To be eligible to take an examination for a license to teach electrology, a person must:

(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;

(b) have a 100-hour teacher certificate; and

(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination."

Section 87. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption Exemption for persons with disabilities. (1) ~~Examinations for a license to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring must be held at places and times specified by the board. The examinations may not be confined to a specific method or system. The board may contract with an outside agency for examination and grading services.~~

~~(2) Persons~~ *A person with a physical disabilities disability who is trained for barbering, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services are is, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary certificate or license to practice the profession in this state."*

Section 88. Section 37-31-311, MCA, is amended to read:

"37-31-311. Schools — ~~certificate of registration license — requirements — bond — curriculum.~~ (1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of teaching barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless ~~a certificate of registration has been first obtained from licensed by the department. Application for the certificate license must be filed with the department on a an approved form prescribed by the board.~~

(2) A school for teaching barbering may not be granted a ~~certificate of registration license~~ unless *it the school* complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers ~~who determined by the board determines are to be~~ necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and ~~prescribes~~ a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

(3) A school for teaching cosmetology may not be granted a ~~certificate of registration license~~ unless ~~it~~ *the school* complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers ~~who determined by the board~~ ~~determines are to be~~ necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and ~~prescribes~~ a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrolysis may not be granted a ~~certificate of registration license~~ unless ~~it~~ *the school* maintains a school term, ~~prescribes~~ and a course of practical training and technical instruction ~~prescribed by the board~~, and possesses apparatus and equipment necessary for teaching electrolysis as prescribed by the board.

(5) A school for teaching manicuring may not be granted a ~~certificate of registration license~~ unless ~~it~~ *the school* complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and ~~prescribes~~ a course of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a ~~certificate of registration license~~ unless ~~it~~ *the school* complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses ~~or certificates of registration~~ for schools of barbering, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board.

(11) A professional salon or shop may not be operated in connection with a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in ~~registered~~ *licensed* schools of barbering, cosmetology, electrology, esthetics, or manicuring."

Section 89. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's *or school's* license ~~or a school's certificate of registration~~.

(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a salon or shop, upon payment of the initial inspection fee, a temporary permit authorizing the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever occurs first. A temporary permit is not renewable.

(4) The department shall require the inspector or inspectors, appointed as provided in subsection (1), to conduct an annual inspection of each salon or shop in the state."

Section 90. Section 37-31-323, MCA, is amended to read:

“37-31-323. Fees. (1) Fees for licenses ~~and certificates of registration~~ must be paid to the department in amounts prescribed by the board.

(2) The license ~~and registration~~ fees must be paid in advance to the department unless otherwise provided by board rule.

(3) Other or additional license ~~or registration~~ fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of barbering, cosmetology, electrology, esthetics, or manicuring.”

Section 91. Section 37-34-201, MCA, is amended to read:

“37-34-201. Powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in *Title 37, chapter 1, and this section*; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board’s duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a ~~license application procedure and~~ acceptable certifications for each category of license;

~~(b) the establishment of license fees commensurate with actual costs;~~

~~(e)~~(b) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303; and

~~(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses consistent with the provisions in 37-1-138;~~

~~(e) the adoption of disciplinary standards for licensees;~~

~~(f) the establishment of hearing procedures; and~~

~~(g)~~(c) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.”

Section 92. Section 37-34-305, MCA, is amended to read:

“37-34-305. Licensure application procedures. (1) An applicant shall submit an application for a license to the board ~~upon the forms prescribed and furnished by the board~~ and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the ~~board~~ department shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to 37-34-201 and 37-34-303.

~~(3) A license issued under this chapter must be renewed on or before the date set by department rule.~~

~~(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board."~~

Section 93. Section 37-35-103, MCA, is amended to read:

"37-35-103. Department powers and duties. (1) The department shall:

- (a) ~~examine~~ license; and renew the licenses of qualified applicants;
- (b) adopt rules:
 - (i) for eligibility requirements and competency standards;
 - ~~(ii) prescribing the time, place, content, and passing requirements of the licensure and competency examinations and passing scores for licensure under 37-35-202;~~
 - ~~(iii) for application forms and fees for licensure and for renewal and licensure expiration dates; and~~
 - ~~(iv)(ii) defining any unprofessional conduct that is not included in 37-1-316 37-1-410; and~~
 - ~~(e)(iii) adopt and implement rules setting criteria for training programs, internships, and continuing education requirements to ensure the quality of addiction counseling.~~

(2) The department may:

- (a) adopt rules necessary to implement the provisions of this chapter;
- (b) adopt rules specifying the scope of addiction counseling that are consistent with the education required by 37-35-202; and
- (c) establish licensure requirements and procedures that the department considers appropriate."

Section 94. Section 37-40-302, MCA, is amended to read:

"37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form ~~prescribed~~ *furnished* by the ~~board~~ *department*.

(2) An applicant must have a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college ~~and shall pass an examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.~~

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration.

(4) ~~Holders~~ *A holder of a current certificate is* ~~entitled to append to their the holder's name the initials "R.S."~~

Section 95. Section 37-42-304, MCA, is amended to read:

"37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost ~~as established pursuant to 37-1-134~~, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."

Section 96. Section 37-42-308, MCA, is amended to read:

“37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) Subject to subsection (6), if a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the necessary renewal fee, the department shall suspend the certificate. Subject to subsection (6), the department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of ~~its~~ *the department's* intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall ~~make application~~ *apply* to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

(6) This section may not be interpreted to conflict with the provisions of 37-1-138.”

Section 97. Section 37-47-101, MCA, is amended to read:

“37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Base of operations” means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) “Board” means the board of outfitters provided for in 2-15-1773.

(4) “Camp” means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means ~~that the~~ *the period beginning January 1 and ending December 31 of the same year indicated on the face of the license for which the license is valid.*

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who ~~has met~~ *meets* experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 98. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

~~(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.~~

~~(2)~~(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

~~(3)~~(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

~~(4)~~(3) establish outfitter standards, guide standards, and professional guide standards;

~~(5)~~(4) adopt:

~~(a) rules of procedure;~~

~~(b)~~(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

~~(c)~~(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

~~(d)~~(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

~~(e)~~(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.

~~(6)~~(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

~~(7)~~(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection ~~(5)(c)~~ (4)(d)."

Section 99. Section 37-47-304, MCA, is amended to read:

"37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall apply for a license on a form ~~prescribed and~~ furnished by the ~~board~~ department.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant ~~will~~ intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) ~~Applications~~ *An application* for an outfitter's license must be in the name of an individual person only. ~~Applications~~ *An application* involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 100. Section 37-50-304, MCA, is amended to read:

"37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) ~~Persons~~ *A person* serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering ~~this service held themselves out the~~ *armed forces represented to the public as that the person was a public* ~~accountants~~ *accountant* and who ~~were~~ *was* engaged as ~~principals~~ *a principal* in this state in the practice of public accounting as ~~their~~ *the person's* principal occupation prior to service in the armed forces may register with the department within 6 months after the date of ~~their~~ *the person's* separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) ~~In order to~~ To be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination ~~provided for in 37-50-308~~ prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination."

Section 101. Section 37-51-204, MCA, is amended to read:

"37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required ~~under 37-51-310 by the board~~ when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction."

Section 102. Section 37-51-303, MCA, is amended to read:

"37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination ~~prescribed by or under the supervision of the board. The examination must be given at least once each 6 months and at places within the state that the board prescribes.~~

(2) (a) The examination for a salesperson's license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker's license must be of a more exacting nature and scope and more stringent than the examination for a salesperson's license."

Section 103. Section 37-51-305, MCA, is amended to read:

"37-51-305. License — form — delivery — display — pocket card. (1) ~~The board shall prescribe the form of license.~~ A license shall *must* bear the seal of the board.

(2) The license of a real estate salesperson ~~shall~~ *must* be delivered or mailed to the real estate broker with whom the real estate salesperson is associated and ~~shall~~ *must* be kept in the custody and control of the broker.

(3) A broker shall display ~~his~~ *the broker's* own license conspicuously in ~~his~~ *the broker's* place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have been paid and, on real estate salesperson's cards only, the name and address of the broker with whom ~~he~~ *the real estate salesperson* is associated."

Section 104. Section 37-51-603, MCA, is amended to read:

"37-51-603. Qualification of property manager applicants — examination — form of licenses. (1) The board by rule shall require an

applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

~~(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.~~

~~(4)~~(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

~~(5)~~(4) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

~~(6)~~(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board."

Section 105. Section 37-53-104, MCA, is amended to read:

"37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) ~~format of forms for applications and renewal of registration qualifications for applicants and prescribing any additional applicant information to that must be supplied;~~

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; ~~and~~

(5) additional information included in a disclosure document; *and*

(6) *fees established pursuant to 37-1-134."*

Section 106. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) Except as provided in 37-60-303(8), an application for a license must be made on *a* ~~an approved form prescribed by the board~~ and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) one recent photograph of the applicant, of a type prescribed by the board, and two classifiable sets of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) The submittal of fingerprints ~~must be~~ *is* a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."

Section 107. Section 37-66-304, MCA, is amended to read:

"37-66-304. (Temporary) Qualifications not required — application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass ~~a written~~ *an examination established prescribed* by the board.

(2) Each applicant must be admitted to the examination without prerequisite qualifications. (Terminates September 30, 2005—sec. 78, Ch. 492, L. 2001.)

37-66-304. (Effective October 1, 2005) Qualifications and application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.

(2) Each applicant for licensure must have successfully completed the educational, practical experience, and ~~written~~ *established prescribed* examination requirements *established prescribed* by the board."

Section 108. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — examination — fees. (1) ~~Applications~~ *An application* for licensure must be on ~~forms prescribed by the board and a form~~ *furnished by the department, must contain statements made under oath showing the applicant's education and that provides for a detailed summary of the applicant's technical work; and that* must contain the required references.

(2) The application fee for an engineer intern is as prescribed by the board and must accompany the application. An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding ~~an a board-approved~~ *a board-approved* engineer intern certificate ~~validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or~~

licensure. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

~~(4) The department, subject to approval by the board, may, on approval of the application and payment of an application fee as prescribed by the board, issue a license as a professional engineer to a person who holds a certificate of qualification or licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.~~

(4) An applicant for a license as a professional engineer shall file an application and satisfactorily pass an examination prescribed by the board. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

(5) The application fee for a land surveyor intern is as prescribed by the board and must accompany the application. An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a *board-approved* land surveyor intern certificate validated in Montana. ~~For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification.~~ Upon approval of an application for licensure as a professional land surveyor and passage of the required ~~examination examinations~~, the department shall issue a license as a professional land surveyor.

(7) *(a)* The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding *board-approved* engineer intern and land surveyor intern certificates validated in Montana. ~~For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board.~~

(b) The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor and passage of the required examinations, the department shall issue a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee."

Section 109. Section 37-67-321, MCA, is amended to read:

"37-67-321. Emeritus status. (1) A licensee who no longer practices engineering or land surveying may apply to the ~~board~~ *department* for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the ~~board~~ *department* shall issue a license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice engineering or land surveying.

(4) The ~~board~~ department shall reissue a license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for licensure, the applicant has met ~~the~~ requirements *set by the board* for maintaining professional competence ~~established under 37-67-315.~~"

Section 110. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization — meetings — rulemaking power — seal.

(1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times ~~if that the board~~ considers necessary.

(3) The board ~~may~~ shall:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and ~~for the examination and licensing of for the examination of~~ master and journeyman electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 111. Section 37-68-304, MCA, is amended to read:

"37-68-304. Master electricians — application — qualifications — contents of contents of examination — fees. (1) An applicant for a master electrician's license shall furnish written evidence of being a graduate electrical engineer of an accredited college or university and of having 1 year of *legally obtained* practical electrical experience or that the applicant is a graduate of an electrical trade school and has at least 4 years of *legally obtained* practical experience in electrical work or has had at least 5 years of *legally obtained* practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) ~~Applicants~~ An applicant for a license as a master electrician shall file an application on ~~forms prescribed by the board and a form~~ furnished by the department, *submit appropriate fees, and satisfactorily pass an examination prescribed by the board.* The board shall, not less than 30 days prior to a scheduled examination, notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

~~(3) The examination must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

~~(a) the national electric code;~~

~~(b) cost estimating for electrical installments;~~

~~(c) procurement and handling of materials needed for electrical installations and repair;~~

- ~~(d) reading blueprints for electrical work;~~
- ~~(e) drafting and layout of electrical circuits; and~~
- ~~(f) knowledge of practical electrical theory.~~

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs. The board shall, not less than 30 days prior to a scheduled examination, notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.~~

~~(3) The examination must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the national electric code;~~
- ~~(b) cost estimating for electrical installments;~~
- ~~(c) procurement and handling of materials needed for electrical installations and repair;~~
- ~~(d) reading blueprints for electrical work;~~
- ~~(e) drafting and layout of electrical circuits; and~~
- ~~(f) knowledge of practical electrical theory.~~

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."~~

Section 112. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence of at least 4 ~~years' years of~~ apprenticeship in the electrical trade or 4 ~~years' years of~~ legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant must be made and given as in the case of master electricians' licenses. ~~The examination for a journeyman's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the Ohm's law;~~
 - ~~(b) the national electric code; and~~
 - ~~(c) layout and practical installation of electrical circuits. The examination for a journeyman's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~
- ~~(a) the Ohm's law;~~
 - ~~(b) the national electric code; and~~
 - ~~(c) layout and practical installation of electrical circuits.~~

~~(2) An applicant for a residential electrician's license shall furnish written evidence of at least 2 ~~years' years of~~ apprenticeship in the electrical trade or 2~~

~~years'~~ years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant must be made and given as in the case of master electricians' licenses. ~~The examination for a residential electrician's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

~~(a) the Ohm's law;~~

~~(b) the national electric code; and~~

~~(c) layout and practical installation of electrical circuits. The examination for a residential electrician's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

~~(a) the Ohm's law;~~

~~(b) the national electric code; and~~

~~(c) layout and practical installation of electrical circuits."~~

Section 113. Section 37-68-307, MCA, is amended to read:

"37-68-307. Examination procedure — third-party services — issuance of master, journeyman, or residential electrician's license — expiration. (1) To ensure impartiality, the examination for either the residential, master's, or journeyman's license must be administered by the department. The department may use a third party to provide examination and grading services. The examination passing grade is 75%.

~~(2) If it is determined that the applicant has passed the examination, the department shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.~~

~~(3) Each original license expires on the renewal date established by the department by rule if it is not more than 2 years after the date of issuance."~~

Section 114. Section 37-68-310, MCA, is amended to read:

"37-68-310. License renewal period — renewal *Renewal* of lapsed licenses. (1) Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board or ~~unless the department changes the duration of the renewal period, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid.~~ It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. Subject to subsection (2), a lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

~~(2) This section may not be interpreted to conflict with 37-1-138."~~

Section 115. Section 37-68-312, MCA, is amended to read:

“37-68-312. Electrical contractor’s license — application — issuance — fees — renewal. Each electrical contractor shall, on or before the date set by department rule, file with the department an application ~~in writing together with the appropriate fees~~ for each firm operated by the electrical contractor in this state ~~for renewal of the license. A license may not be issued or renewed until the applicant meets the licensure requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor.~~ Licenses must bear the date of issuance or renewal. A license must be renewed for a 3-year period upon payment to the department of the license fee on or before the renewal date and upon meeting the requirements set by board rule.”

Section 116. Section 37-69-304, MCA, is amended to read:

“37-69-304. Qualifications of applicants for journeyman plumber’s license — restriction on authority — fees — third-party services. (1) The following requirements must be met by applicants for a journeyman plumber’s license:

(a) a specific record of ~~5 years’~~ *years of legally obtained* experience in the field of plumbing ~~of a character satisfactory to the board.~~ This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination ~~conducted by the department, subject to 37-1-101(4), testing the applicant’s knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing prescribed by the board conducted by the department, subject to 37-1-101(4), testing the applicant’s knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing.~~

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

~~(3) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.~~

~~(4) The department may use a third party to provide examination and grading services.”~~

Section 117. Section 37-69-305, MCA, is amended to read:

“37-69-305. Qualifications of applicants for master plumber’s license — restriction on authority — fees — third-party services. (1) The following requirements must be met by an applicant for a master plumber’s license:

(a) evidence of ~~4 years’~~ *years of* experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 ~~years~~ *years* of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) ~~satisfactory completion of an examination for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing prescribed by the board for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing.~~

(2) For purposes of subsection (1), a ~~year's~~ *1 year* of experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow the master plumber's license to be used by any person or firm, corporation, or business other than the master plumber's own for the purpose of obtaining permits or for doing plumbing work under the license.

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.~~

~~(5) The department may use a third party to provide examination and grading services."~~

Section 118. Section 37-69-306, MCA, is amended to read:

"37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). ~~The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.~~

~~(2) The applicant must be examined as to the applicant's qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine the applicant's skill and qualifications as a master plumber or journeyman plumber.~~

(2) ~~The applicant must,~~ upon successfully passing ~~the~~ an examination prescribed by the board, ~~shall~~ be issued a license authorizing ~~him~~ *the applicant* to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

~~(3)(3)~~ In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. ~~No~~ An individual, firm, or corporation may *not* do the work of a master plumber unless licensed under this chapter.

~~(4)(4)~~ In addition to the temporary permits authorized in 37-1-305, the ~~board~~ *board* may, ~~on a case-by-case basis at the board's discretion and on a case-by-case basis at the board's discretion~~ in accordance with criteria determined by ~~the board~~ *the board*, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible ~~but~~ who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date."

Section 119. Section 37-69-401, MCA, is amended to read:

“37-69-401. Medical gas piping installation endorsement. (1) A medical gas piping installation endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

(2) To be eligible for endorsement under this section, a person must meet all requirements for endorsements established by the board by rule.

(3) A person with a valid medical gas piping installation endorsement from another state may install medical gas piping in this state.

(4) The board shall by rule establish the requirements for obtaining a medical gas piping installation endorsement. ~~Fees must be established by rule and must be commensurate with the costs of administering the medical gas piping installation endorsement program.~~

Section 120. Section 37-72-102, MCA, is amended to read:

“37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, ~~or 37-72-301 through, 37-72-302, 37-72-304, 37-72-305, or 37-72-307~~ or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.”

Section 121. Section 37-72-202, MCA, is amended to read:

“37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 ~~and 37-72-303 through 37-72-306, 37-72-304, and 37-72-305~~, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for ~~such inspections related to construction blasting~~ or for inspectors to carry out ~~such inspections related to construction blasting~~;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern its *department* proceedings under 37-72-203.”

Section 122. Section 37-72-305, MCA, is amended to read:

“37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of an application and application fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing the person to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements

substantially equivalent to the requirements of 37-72-301 through ~~37-72-303 and 37-72-302.~~"

Section 123. Section 37-76-109, MCA, is amended to read:

"37-76-109. Registration and renewal fees. (1) An application for registration or renewal of registration must be accompanied by a fee of ~~\$200.~~

(2) All fees and money received by the department must be deposited in ~~a~~ *the* state special revenue *fund in an* account for use by the department in performing the duties required by this chapter."

Section 124. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, ~~in order to ensure for the purpose of ensuring~~ a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician assistant-certified pursuant to 37-20-203."

Section 125. Section 50-74-312, MCA, is amended to read:

"50-74-312. Review of license rejection — *waiting period*. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of labor and industry the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of labor and industry determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant ~~is required to~~ may reapply to take the license examination, as provided in ~~50-74-309 and~~ 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

Section 126. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) ~~It is unlawful for a~~ A person ~~to may not~~ sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of ~~its~~ the dealer's field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of \$45. ~~Dealers~~ A dealer applying for renewal of a license shall ~~do so~~ apply on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in *an account* in the state special revenue ~~account~~ fund pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 ~~and 37-7-303~~, veterinarians licensed as provided for in 37-18-302 ~~and 37-18-303~~, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, ~~provided that if~~ the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians ~~shall~~ must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 127. Repealer. Sections 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, and 50-76-105, MCA, are repealed.

Section 128. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 468

[HB 186]

AN ACT REGULATING THE OPERATION OF VARIOUS TYPES OF VEHICLES; DEFINING "MOTORIZED NONSTANDARD VEHICLE" AND "ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE"; PROHIBITING THE OPERATION OF MOTORIZED NONSTANDARD VEHICLES ON CERTAIN WAYS OF THIS STATE OPEN TO THE PUBLIC UNLESS AUTHORIZED BY THE LOCAL GOVERNING BODY; AUTHORIZING THE OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON CERTAIN SIDEWALKS, ROADS, AND STREETS; REVISING THE DEFINITIONS OF "MOTOR VEHICLE", "MOTORCYCLE", AND "MOTOR-DRIVEN CYCLE"; CLARIFYING THAT LOCAL AUTHORITIES MAY REGULATE MOTORIZED NONSTANDARD VEHICLES ON SIDEWALKS, STREETS, AND HIGHWAYS UNDER THEIR JURISDICTION; AMENDING SECTIONS 33-23-204, 61-1-102, 61-1-105, 61-1-106, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Motorized nonstandard vehicle. (1) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(a) is propelled by its own power, using an internal combustion engine or an electric motor;

(b) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(c) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(2) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(3) The term does not include an electric personal assistive mobility device, as defined in [section 2], or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

Section 2. Electric personal assistive mobility device. “Electric personal assistive mobility device” means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

Section 3. Unlawful operation of motorized nonstandard vehicle — exception. A person may not operate a motorized nonstandard vehicle on ways of this state open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body of the county, city, or town for a public way under its jurisdiction.

Section 4. Authorized operation of electric personal assistive mobility devices. Electric personal assistive mobility devices, as defined in [section 2], are permitted to operate on sidewalks, unless they are prohibited by official traffic control devices, on bike paths, and on roads and streets that have a speed limit of 35 miles an hour or less.

Section 5. Section 33-23-204, MCA, is amended to read:

“33-23-204. Definitions. As used in this part, the following definitions apply:

(1) (a) “Motor vehicle” means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.

(b) The term does not include a ~~bicycle as defined in 61-1-123~~ *bicycle, as defined in 61-1-123, an electric personal assistive mobility device, as defined in [section 2], and a motorized nonstandard vehicle, as defined in [section 1].*

(2) “Motor vehicle liability policy” means a policy of automobile or motor vehicle insurance against liability required under Title 61, chapter 6, parts 1 and 3, and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages.”

Section 6. Section 61-1-102, MCA, is amended to read:

“61-1-102. Motor vehicle. (1) “Motor vehicle”:

(a) means a vehicle propelled by its own power and designed ~~or used~~ to transport persons or property upon the highways of the state;

(b) for the purpose of chapter 3, includes trailers and semitrailers;

(c) for the purpose of chapter 3, parts 1 and 2, includes campers, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601.

(2) The term does not include a ~~bicycle as defined in 61-1-123~~ *bicycle, as defined in 61-1-123, an electric personal assistive mobility device, as defined in [section 2], and a motorized nonstandard vehicle, as defined in [section 1].*”

Section 7. Section 61-1-105, MCA, is amended to read:

“61-1-105. Motorcycle. (1) “Motorcycle” means a motor vehicle having ~~not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself~~ *a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.*

(2) A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(3) The term does not include a tractor, ~~or a bicycle as defined in 61-1-123 a motorized nonstandard vehicle, as defined in [section 1], or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.~~

Section 8. Section 61-1-106, MCA, is amended to read:

"61-1-106. Motor-driven cycle. (1) "Motor-driven cycle" means ~~every~~ a motorcycle, including ~~every~~ a motor scooter, with a motor ~~which produces not to exceed 5 horsepower that produces five-brake horsepower or less. The term does not include a bicycle as defined in 61-1-123.~~

(2) *The term does not include a motorized nonstandard vehicle, as defined in [section 1]."*

Section 9. Section 61-12-101, MCA, is amended to read:

"61-12-101. Powers of local authorities to regulate traffic. The provisions of ~~chapter~~ *chapters* 8 and ~~chapter~~ 9 ~~shall not be deemed to do not~~ prevent local authorities with respect to *sidewalks*, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles ~~thereon~~ *on those highways* be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway and requiring that all ~~the~~ vehicles stop before entering or crossing ~~the same~~, *a through highway* and designating any intersection as a stop intersection; and requiring all vehicles to stop at one or more entrances to ~~such~~ *stop* intersections;
- (7) restricting the use of highways as authorized in 61-10-128(2);
- (8) regulating the operation of bicycles and requiring the registration and licensing of ~~same bicycles~~, including ~~the requirement of requiring~~ a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
- (10) altering the speed limits as authorized ~~herein~~ *in Title 7, chapter 14, and Title 61, chapter 8*;
- (11) regulating the ~~driving operating of vehicles~~ *a vehicle* by ~~any~~ a person who is ~~an~~ a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree ~~which that~~ renders ~~him~~ *the person* incapable of safely ~~driving operating~~ a vehicle within the incorporated limits of any city or town;
- (12) regulating or prohibiting ~~any~~ a person who is under the influence of intoxicating liquor from ~~driving operating~~ or being in actual physical control of ~~any~~ a vehicle within the incorporated limits of ~~any~~ a city or town;
- (13) regulating or prohibiting the ~~driving of vehicles~~ *operation of a vehicle* by ~~any~~ a person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of ~~any~~ a city or town;

(14) enacting as ordinances any ~~and all~~ provisions of chapter 8 or ~~chapter 9~~ and any ~~and all~~ other laws regulating traffic, pedestrians, vehicles, and operators ~~thereof of vehicles~~, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction ordinances; and

(15) *regulating the operation of motorized nonstandard vehicles, as defined in [section 1], on sidewalks, streets, and highways.*"

Section 10. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61, chapter 1, part 1, apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 3 and 4].

Section 11. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 1 of this act] is void, internal references to [section 1] in [this act] are changed to 61-1-101, and the following definition is inserted into 61-1-101 as amended by Senate Bill No. 285:

"(28) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person."

Section 12. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 2 of this act] is void, internal references to [section 2] in [this act] are changed to 61-1-101, and the following definition is inserted into 61-1-101 as amended by Senate Bill No. 285:

"(13) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour."

Section 13. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then subsection (b) of the definition of "motorcycle" in 61-1-101 as amended by Senate Bill No. 285 reads:

"(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property."

Section 14. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then subsection (b) of the definition of "motor-driven cycle" in 61-1-101 as amended by Senate Bill No. 285 reads:

“(b) The term does not include a bicycle as defined in 61-8-102 or a motorized nonstandard vehicle.”

Section 15. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 469

[HB 188]

AN ACT GENERALLY REVISING THE SECURITIES AND INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; CLARIFYING A DEPOSITORY FOR SECURITIES EXAMINATION COSTS; CLARIFYING VARIOUS ACCOUNT, MORTALITY TABLE, AND MANUAL REFERENCES; REVISING THE APPLICABILITY OF CERTAIN REPORTING PENALTY PROVISIONS; EXPANDING REINSURANCE OPTIONS FOR FARM MUTUAL INSURERS; EXCLUDING CERTAIN UNALLOCATED ANNUITY CONTRACTS FROM THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACCOUNT; CHANGING A REFERENCE TO SURPLUS LINES PRODUCER FEE; ADDING A PRIME RATE FACTOR TO CERTAIN INTEREST RATE PAYMENTS; ALLOWING INCLUSION OF THE HIGHWAY TRAFFIC SAFETY FEE IN A PREMIUM REDUCTION; REVISING THE DEFINITION OF “CONSULTANT”; CHANGING REFERENCES TO APPLICATION FORMS; SPECIFYING HOW CRIMINAL BACKGROUND CHECKS MAY BE HANDLED; CLARIFYING APPLICATION OF CONTINUING EDUCATION PROVISIONS TO INDIVIDUALS AND REMOVING A CARRYFORWARD PROVISION; ADDING REPORTING AND COMPLIANCE REQUIREMENTS FOR RENTAL VEHICLE ENTITIES; LIMITING INTEREST DUE ON CLAIMS; REVISING THE DATE FOR AN EXEMPTION RELATED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY PRIVACY REGULATIONS; CLARIFYING INCONTESTABILITY OF CERTAIN LIFE INSURANCE EXCHANGE OR CONVERSION POLICIES; INCLUDING INTENT NOTIFICATION IN CHARITABLE GIFT ANNUITY REQUIREMENTS; REVISING DOWNWARD THE NUMBER OF EMPLOYEES NECESSARY FOR CERTAIN GROUP INSURANCE POLICIES; CLARIFYING POLICY COVERAGE OF NEWBORNS; CLARIFYING THE DEFINITION OF “CREDITABLE COVERAGE”; EXCLUDING EXCEPTED BENEFIT PLANS FROM CONVERSION REQUIREMENTS; DEFINING RESIDENCY FOR THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING RULEMAKING AUTHORITY RELATED TO THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING REFERENCES TO THE COMPREHENSIVE HEALTH ASSOCIATION PORTABILITY PLAN; CLARIFYING PERMISSIBLE OFFSET FOR PERSONAL PROPERTY LOSS; CLARIFYING PROVISIONS THAT APPLY JOINTLY TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REPEALING VALUATION PROVISIONS FOR BONDS, CERTAIN SECURITIES, PROPERTY, AND PURCHASE MONEY MORTGAGES; AMENDING SECTIONS 30-10-115, 30-10-209, 33-2-305, 33-2-523, 33-2-701, 33-3-431, 33-4-101, 33-4-503, 33-10-203, 33-12-107, 33-16-222, 33-17-102, 33-17-211, 33-17-220, 33-17-301, 33-17-401, 33-17-503, 33-17-1203, 33-17-1205, 33-17-1502, 33-18-232, 33-19-105, 33-20-105, 33-20-704, 33-20-1101, 33-22-101, 33-22-140, 33-22-508, 33-22-1501,

33-22-1502, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1517, 33-22-1803, 33-24-103, 33-28-105, AND 33-28-202, MCA; REPEALING SECTIONS 33-2-532, 33-2-533, 33-2-534, AND 33-2-535, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-115, MCA, is amended to read:

“30-10-115. Deposits to general fund — exception. (1) All fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for portfolio notice filing fees described in 30-10-209(1)(d) and examination costs collected under 30-10-210, must be deposited in the general fund.

(2) All portfolio notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may only be used to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to portfolio notice filing and examinations. Any excess fees must be deposited in the general fund.”

Section 2. Section 30-10-209, MCA, is amended to read:

“30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The

issuer shall pay a fee of \$50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is \$200 for the initial notice filing and \$200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is \$50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) Except for portfolio notice filing fees established in this section *and examination costs collected under 30-10-210*, all fees, ~~examination charges~~, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

Section 3. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer — fee. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the ~~annual~~ fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application ~~on~~ in a form ~~supplied~~ *approved* by the commissioner; and

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more.

(3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 4. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after operative date of 33-20-213 — valuation. (1) This section applies to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the policies and contracts issued prior to October 1, 1995, ~~must be~~ is the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts ~~must be~~ is the commissioner's reserve valuation methods defined in 33-2-525, 33-2-526(3) and (4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 1/2% interest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(i) the ~~commissioner's~~ 1941 *commissioners* standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the ~~commissioner's~~ 1958 *commissioners* standard ordinary mortality table for policies issued on or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; ~~or~~

(ii) for policies issued on or after January 1, 1989:

(A) the ~~commissioner's~~ 1980 *commissioners* standard ordinary mortality table;

(B) at the election of the ~~company~~ insurer for any one or more specified ~~plans~~ policies of life insurance, the ~~commissioner's~~ 1980 *commissioners* standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after ~~1980~~ 2001 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for policies;

(iii) for policies issued on or after January 1, 2005, and before January 1, 2009, at the election of the insurer for any one or more specified policies of life insurance, the 2001 *commissioners* standard ordinary mortality table; or

(iv) for policies issued on or after January 1, 2009, the 2001 *commissioners* standard ordinary mortality table; or

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to the operative date of 33-20-207 and, for policies issued on or after that operative date, the ~~commissioner's~~ 1961 *commissioners* standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, ~~either such a table referenced in subsection (2)(f)(i)(A) or~~, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables ~~as may be~~ approved by the commissioner."

Section 5. Section 33-2-701, MCA, is amended to read:

“33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of ~~its~~ *the authorized insurer’s* financial condition, transactions, and affairs as of the preceding December 31. The statement must be:

(a) in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. ~~The statement must be;~~

(b) completed in accordance with the annual statement instructions and the ~~accounting practices and procedures manual~~ *Accounting Practices and Procedures Manual* of the national association of insurance commissioners. ~~The statement must be;~~

(c) accompanied by an actuarial opinion attesting to the adequacy of the insurer’s reserves. ~~The statement must be;~~

(d) verified by the oath of the insurer’s president or vice president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic versions of ~~its~~ *the domestic insurer’s* annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for the submission of the quarterly statement electronic filings are as follows:

- (i) the first quarter filing is due May 15;
- (ii) the second quarter filing is due August 15; and
- (iii) the third quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer’s affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer’s United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for renewal of the insurer’s certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file ~~its~~ *the insurer’s* annual statement when due or within an extension of time that the commissioner may grant.

(5) A director, officer, ~~insurance producer,~~ or employee of a company who subscribes to, makes, or concurs in making or publishing an annual statement or any other statement required by law knowing that the statement contains any material statement that is false shall be punished by a fine of not more than \$1,000.

(6) The commissioner may impose a fine not to exceed \$100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of \$1,000.”

Section 6. Section 33-3-431, MCA, is amended to read:

“33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of ~~its~~ *the insurer's* organization, to provide ~~it~~ *the insurer* with surplus funds, or for any purpose of ~~its~~ *the insurer's* business upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest at a rate not to exceed the greater ~~than~~ of the rate established in 25-9-205, ~~and~~ *or a rate that is 6 percentage points per year higher than the prime rate of major New York banks as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement.* *The agreement must specify whether the interest constitutes a liability of the insurer must be stipulated in the agreement.* A commission or promotion expense may not be paid in connection with a loan of the type described in this section.

(2) Money borrowed, together with the interest if stipulated in the agreement, does not form a part of the insurer's legal liabilities except as to ~~its~~ *the insurer's* surplus in excess of the amount stipulated in the agreement or the basis of any setoff. However, until the money or interest, or both, are repaid, financial statements filed or published by the insurer must show as a footnote the amount then unpaid together with any interest accrued but unpaid.

(3) A loan of this type to a mutual or stock insurer is subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement are approved unless within 15 days after filing the insurer is notified of the commissioner's disapproval and reasons for the disapproval. The commissioner shall disapprove any proposed loan or agreement if the commissioner finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information filed by the insurer is inadequate.

(4) A loan to a mutual or stock insurer or a substantial portion of the loan must be repaid by the insurer when ~~it~~ *the loan* is no longer reasonably necessary for the purpose originally intended. Repayment of either principal or interest on the loan may not be made by a mutual or stock insurer unless approved in advance by the commissioner.

(5) This section does not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets.”

Section 7. Section 33-4-101, MCA, is amended to read:

“33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; ~~33-2-532 through 33-2-535~~; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapters 18 and 19.”

Section 8. Section 33-4-503, MCA, is amended to read:

“33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers *and reinsurers meeting the requirements of 33-2-1216(3)* and may accept reinsurance from other farm mutual insurers.”

Section 9. Section 33-10-203, MCA, is amended to read:

“33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. ~~All A member insurers~~ *insurer* must be and remain ~~members~~ *a member* of the association as a condition of ~~their~~ *the member's* authority to transact insurance in this state. The association shall perform ~~its~~ functions under the plan of operation established and approved under 33-10-216 and shall exercise ~~its~~ powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account that includes contracts owned by a governmental retirement plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code, but does not otherwise include unallocated annuities; and

(iii) the unallocated annuity account that must ~~include~~ *exclude* unallocated annuity contracts owned by a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code.

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state.”

Section 10. Section 33-12-107, MCA, is amended to read:

“33-12-107. Valuation of investments. For the purposes of this chapter, the value or amount of an investment acquired or held under this chapter or an investment practice engaged in under this chapter, unless otherwise specified

in statute, must be the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the Purposes and Procedures *Manual* of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the ~~Annual Statement Instructions~~ *annual statement instructions*, or any successor valuation procedures officially adopted by the NAIC.”

Section 11. Section 33-16-222, MCA, is amended to read:

“33-16-222. Requirement for rate reduction. (1) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for an insured operator of a covered vehicle who is 55 years of age or older and who has successfully completed a highway traffic safety program as provided by 61-2-102 and 61-2-103.

(2) ~~Any discount~~ *In addition to providing a premium reduction, an insurer may reimburse the fee for participating in the highway traffic safety program.*

(3) *The premium reduction used by the insurer is presumed appropriate unless credible data demonstrates otherwise.”*

Section 12. Section 33-17-102, MCA, is amended to read:

“33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) “Adjuster” means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) “Adjuster license” means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) “Administrator” means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by ~~it~~ *the insurer* in

and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from ~~its~~ *the company's* credit card holders who have authorized ~~it~~ *the company* to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means ~~a person~~ *an individual* who for a fee examines, appraises, reviews, ~~or~~ evaluates, *makes recommendations, or gives advice regarding* an insurance policy, annuity, or pension contract, plan, or program ~~or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.~~

(7) "Consultant license" means a document issued by the commissioner that authorizes ~~a person~~ *an individual* to act as an insurance consultant.

(8) "Individual" means a natural person.

(9) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority

specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(12) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(13) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(14) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(18) "Person" means an individual or a business entity.

(19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or ~~its~~ the equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

(23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 13. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply ~~on~~ *in* a form ~~specified~~ *approved* by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made ~~using the uniform business entity application~~ *in a form approved by the commissioner*. ~~In order to~~ To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license ~~on~~ *in a form specified approved* by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer *to be* responsible for *the person's* compliance ~~by the person~~ with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in ~~its~~ *the association's* name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using ~~it~~ *the name*."

Section 14. Section 33-17-220, MCA, is amended to read:

"33-17-220. Licensing background examination — entity registry criteria. (1) (a) Each applicant shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

- (i) the applicant's:
 - (A) identity;
 - (B) current address;
 - (C) professional license certification; and
 - (D) military service; and
- (ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and
- (B) regulatory agencies' disciplinary actions concerning the applicant.

(b) The background examination is confidential and may not be held as part of the licensee's public file.

~~(2) An entity may not conduct licensing background examinations unless the entity maintains a current filing with the commissioner. The filing must:~~

- ~~(a) contain a description of the criteria, standards, and procedures used in conducting the background examination;~~
- ~~(b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and~~
- ~~(c) ensure confidentiality of the applicant's information.~~

~~(3)(2)~~ *For the purpose of obtaining a state and a federal criminal records check pursuant to subsection (1), the commissioner may require a person applying for a license to submit a full set of fingerprints to the commissioner. The commissioner shall submit the fingerprints to the Montana department of*

justice. The Montana department of justice may exchange this fingerprint data with the federal bureau of investigation.

(3) The commissioner may require fingerprints to be collected and remitted in an electronic format to facilitate periodic resubmission of fingerprints.

(4) The commissioner may contract for the collection, transmission, and retention of fingerprints and may agree to a reasonable fee charged by a contractor for these services. If the commissioner contracts for services, the fee for collecting, transmitting, and retaining of fingerprints must be paid directly to the contractor by the applicant or insurer.

(5) The commissioner is authorized to receive criminal history record information in lieu of the Montana department of justice relating to fingerprints submitted to the federal bureau of investigation.

(6) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints."

Section 15. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply *to the commissioner* for an adjuster license ~~to the commissioner according to forms that in a form approved by the commissioner prescribes and furnishes.~~ The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.”

Section 16. Section 33-17-401, MCA, is amended to read:

“33-17-401. Nonresident insurance producer — license. (1) A nonresident person, unless denied licensure pursuant to 33-17-1001, must be granted a license if:

(a) the person is currently licensed as a resident and is in good standing in the person’s home state;

(b) the person has submitted the proper request for licensure and has paid the fees required by 33-2-708;

(c) the person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person’s home state or a completed ~~uniform~~ application *in a form approved by the commissioner*; and

(d) the person’s home state awards nonresident insurance producer licenses to residents of this state on the same basis.

(2) A person licensed as a surplus lines producer in that person’s home state must receive a nonresident surplus lines producer license upon meeting the requirements of subsection (1). Except for subsection (1), this section does not amend or supersede any provision of the surplus lines insurance law established in Title 33, chapter 2, part 3.

(3) A person licensed as a limited line credit insurance producer or other type of limited lines producer in that person’s home state must receive a nonresident limited lines producer license upon meeting the requirements of subsection (1), granting the same scope of authority as granted under the license issued by the producer’s home state. For the purposes of this subsection, limited lines insurance is any authority granted by a nonresident’s home state that restricts the authority of the licensee to less than the total authority prescribed in the associated major lines pursuant to 33-17-214(2)(a) through (2)(e).

(4) If a nonresident insurance producer’s state of residence suspends, revokes, or terminates the insurance producer’s insurance license in that state, the insurance producer’s Montana nonresident license automatically terminates. The nonresident insurance producer shall notify the commissioner that the insurance producer’s state of residence has suspended, revoked, or terminated the insurance producer’s insurance license in that state.”

Section 17. Section 33-17-503, MCA, is amended to read:

“33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file with the office of the commissioner a written application ~~on forms in a form approved by the commissioner prescribes~~; and

(b) pay a fee pursuant to 33-2-708, which the commissioner shall forward to the state treasurer to be deposited in the state special revenue fund to the credit of the state auditor’s office.

(2) A consultant license continues in force until lapsed, suspended, revoked, or terminated.”

Section 18. Section 33-17-1203, MCA, is amended to read:

“33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection ~~(4)~~ (3):

(a) ~~a person~~ *an individual* licensed to act as an insurance producer or as a consultant other than ~~a person~~ *an individual* licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) ~~a person~~ *an individual* licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or limited lines credit insurance;

(c) ~~a person~~ *an individual* licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

~~(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next biennium.~~

~~(3)~~(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4)(3) The minimum continuing education requirements do not apply to:

(a) ~~a person~~ *an individual* holding a temporary license issued under 33-17-216; or

(b) an insurance producer or consultant otherwise exempted by the commissioner.”

Section 19. Section 33-17-1205, MCA, is amended to read:

“33-17-1205. Compliance — failure to comply — rulemaking authority. (1) Each ~~person~~ *individual* subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that ~~person~~ *individual* during the preceding biennium.

(2) If ~~a person~~ *an individual* fails to comply with this section, the ~~person's~~ *individual's* license lapses. *An individual with a lapsed license may not conduct insurance business under another person's license, including a business entity license affiliation.*

(3) In the continuing education affidavit, an insurance producer shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer in another jurisdiction or by another governmental agency in this state. As used in this subsection, “final disposition of any criminal action” means a plea agreement or sentence and judgment.

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all ~~persons~~ *individuals* who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits."

Section 20. Section 33-17-1502, MCA, is amended to read:

"33-17-1502. Rental vehicle entity license — customer service representative requirements — recordkeeping. (1) A rental vehicle entity may obtain an insurance license as a business entity.

(2) *A rental vehicle entity shall designate an individual licensed insurance producer who is responsible for the rental vehicle entity's compliance with the insurance laws of this state.*

(2)(3) A rental vehicle entity or customer service representative may not present rental vehicle insurance information to renters unless the rental vehicle entity is licensed and the customer service representative has been trained as required under 33-17-1503.

(3)(4) A customer service representative may present rental vehicle insurance information only on behalf of a rental vehicle entity.

(4)(5) A rental vehicle entity shall supervise a customer service representative who provides rental vehicle insurance under the provisions of this part.

(6) *A rental vehicle entity shall submit to the commissioner an annual report listing each customer service representative presenting rental vehicle insurance information to the public."*

Section 21. Section 33-18-232, MCA, is amended to read:

"33-18-232. Time for payment of claims. (1) An insurer shall pay or deny a claim within 30 days after receipt of a proof of loss unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer's right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.

(2) If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer's receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment. *Interest is payable under this subsection only if the amount of interest due on a claim exceeds \$5.*

(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242.”

Section 22. Section 33-19-105, MCA, is amended to read:

“33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules. (1) ~~Beginning on April 17, 2003, the~~ *The* obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information as to any use or disclosure of personal information that is covered under the HIPAA privacy regulations, except for the following provisions:

(a) ~~Notices~~ *A notice* of insurance information practices described as ~~notices a~~ *notice* of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) ~~Reasons~~ *The reasons* for an adverse underwriting ~~decisions~~ *decision* must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why ~~it the~~ *the licensee* is a HIPAA-covered entity.

(4) A licensee may claim an exemption only ~~as to~~ *for* those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A third-party administrator that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any ~~activities~~ *activity* of the third-party administrator that ~~fall~~ *falls* outside of the scope of that agreement ~~are~~ *is* subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2005~~ *2007*:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption, unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 23. Section 33-20-105, MCA, is amended to read:

"33-20-105. Incontestability. (1) There must be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, is incontestable, except for nonpayment of premiums, after ~~it~~ *the policy* has been in force during the lifetime of the insured for a period of 2 years from ~~its~~ *the policy* date of issue.

(2) ~~(a) A policy~~ *Life insurance coverage issued in connection with as the result of an exchange or a conversion of existing life insurance coverage with the same insurer or its subsidiaries is incontestable from the time of issue, except for nonpayment of premiums, under the following conditions:*

(i) the person who is covered is alive; and

(ii) the policy that is being exchanged or converted has been in effect for 2 years from the date of issue.

(b) This subsection (2) does not apply to any amount of insurance provided by the new policy that exceeds the coverage amount that was exchanged or converted."

Section 24. Section 33-20-704, MCA, is amended to read:

"33-20-704. Notice to commissioner. (1) A charitable organization that issues ~~or intends to issue~~ qualified charitable gift annuities shall notify the commissioner in writing ~~within 90 days after April 24, 2003, or prior to the date on which it enters of entering~~ into the organization's first qualified charitable gift annuity agreement and shall notify the commissioner on March 1 of each year in which the charitable organization issues ~~or intends to issue~~ qualified charitable gift annuities. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or

(b) to enable the commissioner to determine appropriate penalties that may be applicable under 33-20-705."

Section 25. Section 33-20-1101, MCA, is amended to read:

“33-20-1101. Employee groups. ~~The~~ (1) *Subject to the requirements in subsections (2) through (5), the lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements. The employer or trustees must be considered the policyholder.*

~~(1)(2)~~ (a) The employees eligible for insurance under the policy ~~shall must~~ be all of the employees of the employer or all of any class or classes thereof of the employer determined by conditions pertaining to their employment. The policy may provide that the term “employees” ~~shall include~~ includes:

(i) the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such the employer’s affiliated corporations, proprietors, or partnerships is under common control. ~~The policy may provide that the term “employees” shall include;~~

(ii) the individual proprietor or partners if the employer is an individual proprietor or a partnership. ~~The policy may provide that the term “employees” shall include; or~~

(iii) retired employees. ~~No~~

(b) A director of a corporate employer ~~shall be~~ is not eligible for insurance under the policy unless such person the director is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. ~~No~~

(c) An individual proprietor or partner ~~shall be~~ is not eligible for insurance under the policy unless he the individual proprietor or partner is actively engaged in and devotes a substantial part of his time working hours to the conduct of the business of the proprietor or partnership.

~~(2)(3)~~ The premium for the policy ~~shall must~~ be paid by the policyholder, either wholly from the employer’s funds or funds contributed by him the employer or partly from such the employer’s funds and partly from funds contributed by the insured employees. ~~No~~ A policy may not be issued on which if the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

~~(3)(4)~~ The policy must cover at least ~~10~~ two employees at date of issue.

(4)(5) The ~~amounts~~ amount of insurance under the policy must be based upon some a plan precluding individual selection either by the employees or by the employer or trustees.”

Section 26. Section 33-22-101, MCA, is amended to read:

“33-22-101. Exceptions to scope. ~~Parts~~ (1) *Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114,*

33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

~~(1)(a)~~ any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

~~(2)(b)~~ any group or blanket policy;

~~(3)(c)~~ life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

~~(a)(i)~~ provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

~~(a)(ii)~~ operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

~~(4)(d)~~ reinsurance.

(2) Section 33-22-301 applies to blanket policies."

Section 27. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as ~~it~~ *that subsection* relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, Public Law 93-406; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e);

(xi) *a high-risk pool in any state.*

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least ~~2~~ *two* employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

(17) "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 28. Section 33-22-508, MCA, is amended to read:

"33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy or certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of ~~the insurance~~ on a person or the person's dependents or family members covered under the policy ceases because of termination of the person's membership in a group eligible for coverage under the policy, because of termination of the person's employment, ~~or~~ as a result of a person's employer discontinuing the employer's business, or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and the person is not insured under another major medical disability insurance policy or plan, the person is entitled

to have issued to the person by the insurer, without evidence of insurability, group disability coverage or an individual disability policy or, in the absence of an individual disability policy issued by the insurer, a group disability policy issued by the insurer on the person or *on* the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of *the* group coverage.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsections (5) and (6). The conversion carrier must be authorized to act as an insurer in this state, and the commissioner shall approve the conversion policies pursuant to 33-1-501.

(3) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer or conversion carrier shall make available a conversion policy as required by subsection (6).

(4) The premium for the individual policy or group policy must be at no more than 200% of the insurer's customary rate applicable to the group policy being terminated at the time of the conversion. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate of the policy being terminated at the time of the conversion. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(5) A conversion carrier shall offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated. The premium for the policy must be calculated as described in subsection (4).

(6) The insurer or conversion carrier shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer *or conversion carrier* is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan *as provided in 33-22-1827*. The conversion rate may not exceed 150% of the highest rate charged for that plan. *This subsection does not apply to disability plans that provide only excepted benefits as defined in 33-22-140.*

(7) The effective date and time of the conversion policy must be established to ensure that there is no break in coverage between the termination of the group policy coverage and the inception of the conversion policy."

Section 29. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) (a) "Eligible person" means an individual who:

(i) is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations adopted pursuant to ~~33-22-1502(1)(b)~~ 33-22-1502(2), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than 150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and

(iii) meets one or more of the following criteria:

(A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, unless the association waives this requirement; or

(B) has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, that has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit ~~guarantee~~ *guaranty* corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "Qualified TAA-eligible individual" means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection ~~(17)~~ (18):

(a) who has 3 months of prior creditable coverage;

(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage; and

(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.

(16) "*Resident*" means an individual who has been legally domiciled in this state for a period of at least 30 days, except that for a federally defined eligible individual there is no 30-day requirement. The criteria for determining residency must be specified in the association's operating rules.

~~(16)~~(17) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

~~(17)~~(18) "TAA-eligible individual" means an individual and any dependent of that individual enrolling in the association portability plan:

- (a) who is a resident of this state on the date of application to the pool;
- (b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit ~~guarantee~~ *guaranty* corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;
- (c) who does not have other health insurance coverage; and
- (d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage.”

Section 30. Section 33-22-1502, MCA, is amended to read:

“33-22-1502. Duties of commissioner — rules. (1) The commissioner shall:

~~(1) adopt rules to carry out the provisions and purposes of this part, including rules:~~

~~(a) regarding late payment penalties or rates of interest charged on unpaid assessments; and~~

~~(b) that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level;~~

~~(2)(a)~~ supervise the creation of the association within the limits described in 33-22-1503;

~~(3)(b)~~ approve the selection of the lead carrier by the association and approve the association’s contract with the lead carrier, including the association plan coverage and premiums to be charged;

~~(4)(c)~~ conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association; ~~and~~

~~(5)(d)~~ undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part; ~~and~~

~~(e) adopt rules to carry out the provisions and purposes of this part, including rules regarding late payment penalties or rates of interest charged on an unpaid assessment.~~

~~(2) The commissioner may adopt rules that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level.”~~

Section 31. Section 33-22-1513, MCA, is amended to read:

“33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual or a TAA-eligible individual to the lead carrier for an association portability plan, the association may not:

- (a) decline to offer an association portability plan; or
- (b) except as provided in subsection (3), impose a preexisting condition exclusion with respect to an individual’s association portability plan coverage if

application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) The association may impose a preexisting condition exclusion as provided in 33-22-1516 with respect to a TAA-eligible individual's association portability plan coverage if that individual does not meet the requirements defining a qualified TAA-eligible individual.

(4) Not less than 88% of the association plan *and the association portability plan* premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(5) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan *and association portability plan* premiums.

(6) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (6)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections (6)(a)(ii)(A)(I) and (6)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An *associate association* member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The

association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed \$50.

(b) For purposes of this subsection (6), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan *and association portability plan* premiums.

(7) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

(8) The association may also accept funding from the federal government, private foundations, and other private funding sources."

Section 32. Section 33-22-1514, MCA, is amended to read:

"33-22-1514. Administration of association plan — rules. (1) The association shall select one lead carrier to issue the association plan *and the association portability plan*. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of ~~its~~ *the receipt of the request*. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan *and the association portability plan* an individual certificate setting forth a statement as to the insurance protection to which the person is

entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association, the legislative finance committee, and the commissioner on a semiannual basis a report of the operation of the association plan *and the association portability plan*. The association ~~must~~ *shall* determine the specific information to be contained in the report prior to the effective date of the association plan *and the association portability plan*.

(5) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan *or the association portability plan*. Each claim payment must include information specifying the procedure involved ~~in the event~~ *if* a dispute *arises* over the amount of payment *arises*.

(6) The lead carrier must be reimbursed from the association plan *and the association portability plan* premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan *and the association portability plan*. The association ~~must~~ *shall* approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for ~~its~~ *the lead carrier's* actions, subject to the laws of this state."

Section 33. Section 33-22-1515, MCA, is amended to read:

"33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan *and the association portability plan* and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner that facilitates public participation in the association plan *and the association portability plan*.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan *and the association portability plan*. The lead carrier shall pay an insurance producer's referral fee of at least \$25 to each licensed disability insurance producer who refers an applicant to the association plan *and the association portability plan*, if the applicant is accepted. The amount of the referral fee must be set by the board of directors of the association and is subject to the approval of the commissioner. The referral fees must be paid by the lead carrier from money received as premiums for the association plan *and the association portability plan*.

(4) An insurer, society, health maintenance organization, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance shall notify the applicant of the existence of the association

plan, requirements for being accepted in the association plan, and the procedure for applying to the association plan.”

Section 34. Section 33-22-1516, MCA, is amended to read:

“33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant’s residence in this state;

(b) the name, address, and age of spouse and children, if any, ~~if they~~ *for those who* are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan *or the association portability plan*.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 3 years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made by a federally defined eligible individual or a qualified TAA-eligible individual within 63 days following termination of the applicant’s most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting condition exclusion for the ~~period of~~ time that any other eligible individual, including an individual who is eligible pursuant to 33-22-1501(7)(a)(ii)(B), was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan.”

Section 35. Section 33-22-1517, MCA, is amended to read:

“33-22-1517. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan *or association portability plan* and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the ~~association~~ plan;
or

(4) enrolls under another disability insurance policy or plan for health service benefits. However, the individual may maintain enrollment in the association plan *or the association portability plan* during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan *or the association portability plan* during the waiting period, the association plan *or the association portability plan* may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan *or the association portability plan* are considered secondary to the benefits available under the individual's new policy or plan."

Section 36. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) (a) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704.

(b) The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include coverage of excepted benefits, *as defined in 33-22-140*, if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least *2 two* but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

- (a) are affiliated companies;
- (b) are eligible to file a combined tax return for purposes of state taxation; or
- (c) are members of a bona fide association.

(21) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

Section 37. Section 33-24-103, MCA, is amended to read:

“33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, ~~which~~ *that* insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then ~~he~~ *the insurer* shall compute any total loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets *except for the selected deductible in the policy.*”

Section 38. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft articles of incorporation, the commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation

and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company formed as a corporation has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. ~~If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.~~

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(9) Except as provided in 33-28-306, the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a

certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 39. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) An industrial insured captive insurance company and an association captive insurance company shall comply with the investment requirements contained in ~~33-2-532, 33-2-533~~, Title 33, chapter 12, and the rules promulgated in accordance with these provisions. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 40. Repealer. Sections 33-2-532, 33-2-533, 33-2-534, and 33-2-535, MCA, are repealed.

Section 41. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2005.

(2) [Sections 4, 42, and 43 and this section] are effective on passage and approval.

(3) [Section 22] is effective July 1, 2005.

Section 42. Retroactive applicability. [Section 4] applies retroactively, within the meaning of 1-2-109, to January 1, 2005.

Section 43. Applicability. [Section 18] applies to continuing education reporting periods beginning January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 470

[HB 214]

AN ACT CREATING A CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSE; PROVIDING TERMS, CONDITIONS, AND SALE CRITERIA FOR THE LICENSE; LIMITING THE NUMBER OF AVAILABLE CLASS B-13 LICENSES AND PROVIDING THAT B-13 LICENSES ARE NOT INCLUDED IN THE LIMIT ON AVAILABLE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; PROVIDING THAT THE HOLDER OF A CLASS B-13 LICENSE MAY ALSO APPLY FOR A NONRESIDENT ANTLERLESS ELK B TAG; AMENDING SECTIONS 87-2-104 AND 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class B-13—nonresident youth big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is

under 18 years of age may, upon payment of a fee of one-half the cost of a regularly priced Class B-10 nonresident big game combination license, [plus the nonresident hunting access enhancement fee in 87-2-202(3)(d),] and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase a Class B-13 nonresident youth big game combination license.

(2) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license, the holder must be accompanied by an adult immediate family member who is the holder of a valid nonresident Class B-10 or Class B-11 combination license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.

(3) Not more than 300 Class B-13 licenses are authorized for sale each license year. Class B-13 licenses are not included in the limit on the number of available Class B-10 nonresident big game combination licenses issued pursuant to 87-2-505.

(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission.

Section 2. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class A-5, Class A-7, Class B-7, Class B-8, Class B-10, Class B-11, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.”

Section 3. Section 87-2-511, MCA, is amended to read:

“87-2-511. (Temporary) Sale and use of Class B-10, ~~and~~ Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.

(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(10) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant must provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

87-2-511. (Effective March 1, 2006) Sale of Class B-10 and Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all unsold reserved licenses that are available under subsection (6) must be issued by a drawing among all applicants for the respective unreserved licenses.

(8) *The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant must provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.*

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 5. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then the bracketed language in [section 1(1) of this act] is void.

Section 6. Effective date. [This act] is effective March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 471

[HB 235]

AN ACT IMPLEMENTING CERTAIN 2004 RECOMMENDATIONS OF THE PRIVATE LANDS AND PUBLIC WILDLIFE ADVISORY COUNCIL; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE CERTAIN BIG GAME LICENSES THROUGH AN ANNUAL LOTTERY AND DEDICATING LOTTERY PROCEEDS TO HUNTING ACCESS ENHANCEMENT PROGRAMS AND LAW ENFORCEMENT; ALLOWING A HUNTER MANAGEMENT PROGRAM COOPERATOR TO DESIGNATE AN IMMEDIATE FAMILY MEMBER TO RECEIVE THE COOPERATOR'S COMPLIMENTARY LICENSE; ALLOWING ANY LANDOWNER WHO IS ENROLLED IN THE BLOCK MANAGEMENT PROGRAM TO RECEIVE BENEFITS PROVIDED UNDER THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROVIDE FISCAL ANALYSES OF HUNTING AND FISHING ACCESS ENHANCEMENT PROGRAM FUNDING SOURCES TO THE REVIEW COMMITTEE; AMENDING SECTIONS 87-1-266, 87-1-267, 87-1-269, AND 87-2-702, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annual lottery of hunting licenses — proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

- (a) deer;
- (b) elk;
- (c) shiras moose;
- (d) mountain sheep; and
- (e) mountain goat.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

- (a) the conduct of the lottery authorized in this section;
- (b) the use of licenses issued through the lottery; and
- (c) the price of lottery tickets.

(4) All proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement.

Section 2. Section 87-1-266, MCA, is amended to read:

“87-1-266. (Temporary) Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the ~~quota of 11,500~~ limits established under 87-1-268 and 87-2-505.

(4) (a) *Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident.*

(b) *For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator and spouse and includes legally adopted children and the cooperator's and spouse's siblings and siblings' children.*

(c) *If a cooperator elects to designate an immediate family member to receive a license pursuant to this subsection (4), the cost of the license must be deducted from hunter management program compensation paid to the cooperator.*

(d) *An immediate family member who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.*

(e) *The grant of a Class B-10 nonresident big game combination license to an immediate family member pursuant to this subsection (4) does not affect the limits established in 87-1-268 and 87-2-505.*

~~(4)(a)(5) A resident~~ (5) *Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management*

program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

~~(b) A nonresident landowner who chooses to receive a license under subsection (3) may also receive assistance under the block management program, but is not eligible to receive cash payments under 87-1-267.~~

(5)(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)”

Section 3. Section 87-1-267, MCA, is amended to read:

“87-1-267. (Temporary) Hunting access enhancement program — benefits for providing hunting access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

- (a) hunting access management;
- (b) services to be provided to the public;
- (c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner’s management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

- (b) wildlife habitat provided;
- (c) resident game populations;
- (d) number, sex, and species of animals taken; and
- (e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than \$12,000 a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both, ~~subject to the conditions set out in 87-1-266(4).~~

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)”

Section 4. Section 87-1-269, MCA, is amended to read:

“87-1-269. (Temporary) Report required — review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make ~~suggestions~~ *recommendations* for funding, modification, or improvement needed to achieve the objectives of the program. *The department shall provide fiscal analyses of all hunting access enhancement program funding sources to the review committee for review and recommendations.*

(b) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of the fishing access enhancement program and make ~~suggestions~~ *recommendations* for funding, modification, or

improvement needed to achieve the objectives of the program. *The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.*

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)”

Section 5. Section 87-2-702, MCA, is amended to read:

“87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) *Except as provided in [section 1(2)],* a person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), “limited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is restricted.

(b) *Except as provided in [section 1(2)],* a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), “unlimited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is not restricted.”

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 7. Coordination instruction. (1) If Senate Bill No. 77 is not passed and approved, then [sections 2 through 4 of this act] are void.

(2) If Senate Bill No. 77 is passed and approved, then [section 9 of this act] is void.

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective October 1, 2005.

Section 9. Termination. [Sections 2 through 4] terminate March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 472

[HB 266]

AN ACT IMPLEMENTING THE NOXIOUS WEED MANAGEMENT TRUST FUND CONSTITUTIONAL AMENDMENT; AMENDING SECTIONS 60-3-201, 80-7-508, 80-7-801, 80-7-811, 80-7-814, AND 80-7-815, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

“60-3-201. Distribution and use of proceeds of gasoline dealers’ license tax. (1) All money received in payment of license taxes under the Distributor’s Gasoline License Tax Act, except those amounts paid out of the ~~department of transportation’s~~ *department’s* suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

- (a) 9/10 of 1% to the state park account;
 - (b) 15/28 of 1% to a snowmobile account in the state special revenue fund;
 - (c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; and
 - (d) 1/25 of 1% to the aeronautics revenue fund of the ~~department of transportation~~ under the provisions of 67-1-301.
- (e) The remainder of the money must be used:
- (i) by the ~~department of transportation~~ on the highways in this state selected and designated by the commission;
 - (ii) for collection of the license taxes; and
 - (iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.
- (2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.
- (3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.
- (4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the noxious weed management ~~trust~~ special revenue fund provided for in ~~80-7-811~~ 80-7-816.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 2. Section 80-7-508, MCA, is amended to read:

"80-7-508. Duties of the cooperative extension service. (1) The cooperative extension service ~~within the department of education~~ shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and *shall* make public the best remedies to be employed.

(2) The cooperative extension service shall cooperate with the agricultural experiment station in providing annual reports required under 80-7-814~~(4)~~."

Section 3. Section 80-7-801, MCA, is amended to read:

"80-7-801. Definitions. As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under ~~80-7-814(3)(g)~~ 80-7-814(5)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101(8)(a)."

Section 4. Section 80-7-811, MCA, is amended to read:

"80-7-811. Noxious weed management trust fund. *There (1) As required by Article IX, section 6, of the Montana constitution, there is a noxious weed management trust fund of \$10 million. The department shall administer the trust fund in accordance with this part.*

(2) Deposits to the principal of the noxious weed management trust fund may include but are not limited to:

- (a) federal contributions;*
- (b) private donations; and*
- (c) state contributions."*

Section 5. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. *(1) The provisions of this section constitute the noxious weed management program.*

~~(1)(2) (a) Except as provided in subsection (1)(b) (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part, excluding unrealized gains and losses, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least \$2.5 million.~~

~~(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund reaches \$10 million.~~

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

~~(c) However, interest~~ *Interest* or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the *noxious weed management* special revenue fund and may be expended for noxious weed management projects ~~in accordance with this section~~ *before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.*

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

~~(2)(3)~~ *The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the*

legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than \$100,000 for first-class counties, as defined in 7-1-2111.

~~(3)~~(5) The department may expend funds without the restrictions specified in subsection ~~(2)~~ (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

~~(4)~~(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

~~(5)~~(7) In making expenditures under subsections ~~(2)~~ (3) and ~~(3)~~ through (5), the department shall give preference to weed management districts and community groups.

~~(6)~~(8) If the noxious weed management trust fund is terminated by law *constitutional amendment*, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 6. Section 80-7-815, MCA, is amended to read:

“80-7-815. Noxious weed emergency—~~expenditure authorized.~~ (1) The governor may declare a noxious weed emergency if:

(a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department; or

(b) the state is facing a potential influx of noxious weeds as the result of a natural disaster.

(2) In the absence of necessary funding from other sources, ~~this declaration authorizes the department to allocate up to \$150,000 of the principal of the noxious weed management trust fund~~ *may be appropriated as provided in 80-7-814* to government agencies for emergency relief to eradicate or confine the new noxious weed species or to protect the state from an influx of noxious weeds due to a natural disaster.

~~(3) If the expenditure causes the principal of the trust fund to fall below \$2.5 million, it must be replenished by the interest or revenue generated by the trust fund or by the other revenue provided by this part, as determined by the department."~~

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5(2)(d)] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 473

[HB 288]

AN ACT PROVIDING FOR THE DEPARTMENT OF CORRECTIONS INSTEAD OF THE CLERKS OF COURT TO COLLECT FEES CHARGED FOR SUPERVISION BY THE DEPARTMENT; AND AMENDING SECTIONS 45-9-202 AND 46-23-1031, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or \$1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in

supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the clerk of the district court ~~department of corrections~~ of not less than \$50 per a month to be deposited in an ~~the account in the state special revenue fund to the credit of the department of corrections established in 46-23-1031;~~

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

Section 2. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer, parolee, or person committed to the department who is supervised by the department under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision ~~department~~ a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

(b) The court, department, or board may reduce or waive a fee required by subsection (1)(a) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) ~~Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks~~ *The department* shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) ~~as specified by the supreme court administrator.~~

Section 3. Coordination instruction. If Senate Bill No. 207 and [this act] are both passed and approved, then [section 8] of Senate Bill No. 207 is amended as follows:

“NEW SECTION. Section 8. Effective date dates. (1) [This act] Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Section 6] is effective October 1, 2005.”

Approved April 28, 2005

CHAPTER NO. 474

[HB 327]

AN ACT REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY \$50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103, 39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-73-101, MCA, is amended to read:

“39-73-101. Definitions. (1) “Examining board” ~~shall mean~~ *means* a well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term “gainful occupation” ~~as used herein, shall~~ *may* not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but ~~shall mean~~ *means* any person having an income from any other source exceeding ~~\$150~~ *\$300* per month.

(3) “Payments” means money payments to persons having silicosis ~~as herein defined.~~

(4) “Silicosis” means a fibrotic condition of the lungs due to the inhalation of silica dust.”

Section 2. Section 39-73-103, MCA, is amended to read:

“39-73-103. Conformity with acts of federal government. If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed ~~\$250~~ *\$300* a month, exclusive of any grants made by congress.”

Section 3. Section 39-73-104, MCA, is amended to read:

“39-73-104. Eligibility requirements for benefits. Payment ~~shall~~ *must* be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, ~~which that~~ results in ~~his the~~ *the person's* total disability so as to render it impossible for ~~him the person~~ to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which ~~he the person~~ would receive a payment under this chapter, compensation under ~~The the~~ *the* Occupational Disease Act of Montana, as provided by chapter 72 of this title, ~~which will equal to the sum of \$200 \$300.”~~

Section 4. Section 39-73-107, MCA, is amended to read:

“39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis must be granted a payment by the department of ~~\$250 \$300~~ a month, subject to any additional appropriations. If the person is receiving payments under the Occupational Disease Act of Montana, as provided by chapter 72 of this title, that are less in the aggregate than ~~\$200 \$300~~, then the person is entitled to a payment under this chapter of the difference between the amount received under the Occupational Disease Act of Montana, as provided by chapter 72 of this title, and ~~\$250 \$300~~ a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section.”

Section 5. Section 39-73-109, MCA, is amended to read:

“39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving ~~\$150 \$300~~ a month. ~~However, a person is not eligible for these payments if the spouse's taxable income is \$6,800 or more a year.”~~

Section 6. Appropriation. The following money is appropriated from the general fund to the department of labor and industry to fund an increase of \$50 a month for each individual who receives silicosis benefits:

Fiscal year 2006	\$27,000
Fiscal year 2007	27,000

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 475

[HB 331]

AN ACT PROVIDING FOR MEDICAL MALPRACTICE INSURANCE WHEN
THE INSURANCE IS NOT REASONABLY AVAILABLE; CREATING AN

ASSOCIATION CONSISTING OF CERTAIN CASUALTY INSURERS TO PROVIDE THE INSURANCE; PROVIDING A PROCESS FOR DETERMINING AVAILABILITY OF MEDICAL MALPRACTICE INSURANCE; CREATING A STABILIZATION RESERVE FUND; AND AMENDING SECTION 33-11-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature finds that if a crisis exists because of the potential unavailability of medical malpractice insurance caused by carrier withdrawals from the Montana market, carrier insolvency, underwriting practices of existing carriers, high cost, and other reasons not attributable to neglect, oversight, or willfulness of a prospective policyholder, alternative programs should be employed to help ensure that medical malpractice insurance remains available to Montana health care providers and health care facilities. The purpose of [sections 1 through 20] is to provide a solution to the unavailability of medical malpractice insurance. Although [sections 1 through 20] will not resolve the underlying causes of unavailability and high cost, which extend beyond the insurance mechanism, it is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Association" means the joint underwriting association established pursuant to the provisions of [sections 1 through 20].

(2) "Committee" means a committee designated by the commissioner to coordinate the activities of the market assistance plan and composed of licensed insurance producers, insurers authorized to sell medical malpractice insurance in this state, and eligible surplus lines insurers.

(3) "Health care provider" has the meaning provided in 27-6-103.

(4) "Market assistance plan" means a voluntary mechanism operated by a committee to assist health care providers and health care facilities to buy medical malpractice insurance when medical malpractice insurance is not reasonably available in the voluntary market.

(5) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death of or injury to any person as the result of negligence in rendering professional service by a health care provider.

(6) "Net direct premiums" means gross direct premiums on casualty insurance, excluding premiums written by a risk retention group as defined in 33-11-102, written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple-peril package policies as computed by the commissioner, less return premiums or the unused or unabsorbed portions of premium deposits.

(7) "Voluntary market" means insurers authorized to write medical malpractice insurance in this state, captive insurers authorized to write medical malpractice insurance in this state, and eligible surplus lines insurers, if approved by the commissioner based on financial stability of the surplus lines insurer and the cost and coverage of the medical malpractice policies available from the surplus lines insurers.

Section 3. Market review. (1) After providing notice to all insurers eligible to sell medical malpractice insurance in this state, including eligible surplus lines insurers, the commissioner shall perform a market review to determine the availability of medical malpractice insurance before implementing a market assistance plan under [section 4] or a joint underwriting association under [section 5].

(2) The commissioner shall compile a list of insurers in the voluntary market.

(3) After holding a hearing, the commissioner shall determine whether medical malpractice insurance is reasonably available pursuant to subsection (4) for:

- (a) health care providers, other than health care facilities; or
- (b) health care facilities.

(4) In determining whether medical malpractice insurance is reasonably available, the commissioner shall consider whether:

(a) there is a significant likelihood of a lack of available health care services to the public because of the cost or unavailability of medical malpractice insurance;

(b) a significant portion of the members of a class of health care providers:

(i) cannot obtain medical malpractice insurance from medical malpractice insurers for reasons not attributable to negligence, neglect, oversight, or willfulness of the health care providers; or

(ii) is uninsured as a result of new underwriting restrictions unrelated to the acts or omissions of the health care providers or because of the insolvency of a medical malpractice insurer.

Section 4. Market assistance plan. (1) If the commissioner determines under [section 3] that medical malpractice insurance is not reasonably available, the commissioner shall attempt to form a market assistance plan for medical malpractice insurance before implementing a joint underwriting association under [section 5].

(2) The commissioner may establish a market assistance plan only if the commissioner determines that there exists a sufficient number of insurers in the voluntary market willing to underwrite standard risks at adequate coverage limits.

(3) If an insurer in the voluntary market declines to participate in the market assistance plan, the insurer shall state both the business and the financial reasons for not participating in the market assistance plan.

(4) The commissioner, in consultation with the committee, shall develop a plan of operation for the market assistance plan.

(5) The market assistance plan may include a reasonable processing fee to applicants that seek medical malpractice insurance coverage through the market assistance plan.

(6) Licensed insurance producers may receive a reasonable commission for medical malpractice insurance placed in the market assistance plan. The plan of operation may allow a commission to be paid regardless of whether the producer is appointed or otherwise represents the insurer accepting the risk.

Section 5. Joint underwriting association. (1) A joint underwriting association is created, consisting of all insurers authorized to write or engaged in writing casualty insurance within this state, including insurers writing multiple-peril package policies but excluding risk retention groups. Each insurer shall remain a member of the association as a condition of the insurer's authority to continue to write casualty insurance in this state. The purpose of the association is to provide medical malpractice insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for health care providers, other than health care facilities, until the commissioner has conducted a market review under [section 3], determined that medical malpractice insurance is not reasonably available for health care providers, other than health care facilities, in the voluntary market, and attempted to establish a market assistance plan. Upon the commissioner determining that the market assistance plan has not achieved reasonably available medical malpractice insurance, the commissioner shall notify the association that it may issue policies of medical malpractice insurance to health care providers, other than health care facilities. The association need not be the exclusive agency through which medical malpractice insurance may be written in this state on a primary basis for health care providers, other than health care facilities.

(3) The association may not commence underwriting operations for health care facilities until the commissioner has conducted a market review under [section 3], determined that medical malpractice insurance is not reasonably available for those facilities in the voluntary market, and attempted to establish a market assistance plan. Upon the commissioner determining that the market assistance plan has not achieved reasonably available medical malpractice insurance, the commissioner shall notify the association that it may issue policies of medical malpractice insurance to health care facilities. The association need not be the exclusive agency through which medical malpractice insurance may be written in this state on a primary basis.

(4) If the commissioner determines at any time that medical malpractice insurance is reasonably available in the voluntary market for the health care providers referred to in either subsection (2) or (3), the association shall cease its underwriting operations for the medical malpractice insurance that the commissioner has determined is reasonably available in the voluntary market.

(5) The association may operate for a period of 3 years. At the end of the 3-year period, the association must be dissolved unless the commissioner, after notice and a hearing, reauthorizes the operations of the association. If the commissioner determines that adequate medical malpractice insurance is available in the voluntary market, the commissioner shall order the association to end its underwriting operations and shall supervise the dissolution of the association, including settlement of all financial and legal obligations and distribution of any remaining assets.

Section 6. Authority to issue policies. The association may:

(1) subject to limits specified in the association's plan of operation, but not to exceed \$2 million for each claimant under one policy and \$4 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of medical malpractice insurance to applicants, including incidental coverages;

(2) underwrite the medical malpractice insurance and assume reinsurance from its members; and

(3) cede reinsurance.

Section 7. Plan of operation — submission — amendment. (1) Within 45 days after the creation of the association, the board of directors of the association shall submit to the commissioner for the commissioner's review a proposed plan of operation consistent with the provisions of [sections 1 through 20]. The plan is effective upon order of the commissioner.

(2) The plan of operation must provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance. The plan must contain a preliminary assessment against all members for initial expenses necessary to commence operations and establish necessary facilities and an annual assessment against all members for the costs of managing the association, losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of medical malpractice insurance to be provided by the association.

(3) The plan of operation must provide that the premium for all policyholders of the association, as a group, must be equal to the administrative expenses, loss, loss adjustment expenses, and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders must be given full credit for all association investment income, after deduction of association expenses and a reasonable management fee, on policyholder premiums.

(4) Amendments to the plan of operation may be made by the board of directors of the association, subject to the approval of the commissioner.

Section 8. Application for coverage. (1) After a determination of unavailability is made under [section 5(2) or (3)], a health care provider may apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and that there is no unpaid, uncontested premium due from the applicant for prior medical malpractice insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, then the association, upon receipt of the premium or the portion of the premium that is prescribed in the plan of operation, shall issue a policy of medical malpractice insurance for a term of 1 year.

Section 9. Rates — approval. (1) The rates, rating plans, rating rules, rating classifications, territories, policy forms applicable to the medical malpractice insurance written by the association, and related statistics pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16, must give consideration to the past and prospective loss and expense experience for medical malpractice insurance of the association, trends in the frequency and severity of losses, the investment income of the association, and other information that the commissioner may require.

(2) Within the time directed by the commissioner, the association shall submit an initial filing of policy forms, classifications, rates, rating plans, and rating rules applicable to medical malpractice insurance to be written by the association pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16.

(3) After the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through member assessment or a premium rate increase must be based upon the association's loss and expense experience,

together with other information based upon that experience that the commissioner considers appropriate. Any resulting member assessment or a premium rate increase must be on an actuarially sound basis and be calculated to make the association self-supporting.

Section 10. Recoupment of deficit and member assessments. (1) (a) If the association experiences an underwriting deficit for any year, the deficit must be recouped as provided in the plan of operation and the rating plan must contain the procedures provided for in subsections (1)(b) and (1)(c).

(b) The board of directors shall certify the underwriting deficit to the commissioner. The certification is subject to the review of the commissioner.

(c) After review of the certification, the deficit must be recouped by:

(i) first, reimbursement of the deficit in the following order:

(A) from the stabilization reserve fund, as provided in [section 11];

(B) a premium contingency assessment on the association's policyholders, as provided in [section 12], if the reimbursement in subsection (1)(c)(i)(A) is insufficient; and

(C) an assessment upon the members, as provided in [section 15], if the reimbursement in subsections (1)(c)(i)(A) and (1)(c)(i)(B) is insufficient; and

(ii) second, a premium rate increase on the association's policyholders applicable prospectively, as provided in [section 9].

(2) Reimbursements from the stabilization reserve fund and premium contingency assessments imposed under this section and premiums collected under [sections 9 and 16] and subsection (1)(c)(ii) of this section must be sufficient to recoup all expenses of the association and to reimburse the members for all assessments imposed on them by the association.

Section 11. Stabilization reserve fund. (1) The commissioner shall establish a stabilization reserve fund.

(2) (a) Each policyholder shall pay to the association a stabilization reserve fund charge equal to 15% of each premium payment due for insurance through the association. The stabilization reserve fund charge must be stated separately in the policy and is payable with each premium payment. The association shall cancel the policy of any policyholder who fails to pay the premium stabilization reserve fund charge.

(b) The stabilization reserve fund charge does not constitute a part of the premium and is not subject to premium taxation, servicing fees, acquisition costs, commissions, or any other charges. The stabilization reserve fund charge may not be considered a premium for the purpose of any assessments levied under [section 15].

(3) (a) The association shall collect and administer the stabilization reserve fund charge. The stabilization reserve fund charge must be treated as a liability of the association along with and in the same manner as premium and loss reserves.

(b) All money received by the stabilization reserve fund must be held in trust by a corporate trustee selected by the association. The corporate trustee may invest the money held in trust, subject to the approval of the association. All investment income must be credited to the stabilization reserve fund. All expenses of administration of the stabilization reserve fund must be charged against the fund. The money held in trust may be used only for the purpose of

recoupment of any deficit sustained by the association, as provided in [section 10].

(c) Collections of the stabilization reserve fund charge continue throughout each calendar year for which the fund is established. However, a charge may not be assessed:

(i) during the next succeeding calendar year if the net balance in the stabilization reserve fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the fund; or

(ii) in any year in which a premium contingency assessment is collected, as provided in [section 12].

(4) The stabilization reserve fund charge is not refundable if the policy is canceled after the 90th day of coverage.

(5) Upon dissolution of the association as provided in [section 5(5)], the commissioner shall order that any funds remaining in the stabilization reserve fund be reimbursed to the policyholders in proportion to the amounts of the stabilization reserve fund charges paid by the policyholders.

Section 12. Premium contingency assessment to cover deficit. (1) If the association suffers an underwriting deficit for any year and recoupment of the underwriting deficit by reimbursement, as provided in [section 10(1)(c)(i)(A)], is insufficient, each association policyholder shall pay to the association a premium contingency assessment as provided in the plan of operation. The assessment must bear the same ratio to the amount of the deficit as the policyholder's premium for the year for medical malpractice insurance written or reinsured by the association bore to the total premiums paid to the association for the year. The association may cancel any policy of any policyholder who fails to pay the premium contingency assessment and need not defend or pay any future claims against that policyholder. A deficit premium contingency assessment that cannot be collected from a policyholder may not be assessed against any other policyholder.

(2) The association shall amend the amount of its certification of deficit to the commissioner as the value of its incurred losses becomes finalized, and the association, may amend its recoupment procedure accordingly.

(3) The board of directors may require all members to contribute on a temporary basis to the financial requirements of the association prior to recoupment of any deficit in the proportion specified in the plan.

(4) The association may not collect stabilization reserve assessments, as provided in [section 11], in any year in which premium contingency assessments are collected under this section.

Section 13. Claims-made policies. The association shall offer policies on a claims-made basis. The premiums charged for claims-made policies must be established on an actuarially sound basis and as provided in Title 33, chapter 16.

Section 14. Risk management. (1) The association shall establish a risk management program for persons or entities insured by the association.

(2) The risk management program must include:

(a) standards for systematic investigation and reporting of claims and incidents; and

(b) a loss control program. The loss control program must include procedures for:

- (i) analysis of claim frequency, severity, and causes of loss;
- (ii) identification of situations that may produce large losses;
- (iii) development of measures to control losses;
- (iv) monitoring of the effectiveness of the loss control measures that are implemented; and
- (v) education of insured health care providers and health care facilities on methods to reduce or prevent losses.

(3) The commissioner shall appoint an advisory council consisting of three health care providers and three professional insurance risk managers to provide advice to the association on risk management activities.

Section 15. Financial participation by association members. (1) Each member of the association shall participate in the association's medical malpractice insurance policies, expenses, profits, and losses in the proportion that the net direct premiums of the member during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums of all members of the association.

(2) Each member's participation in the association must be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner.

(3) A member is not obligated to reimburse the association for the member's proportionate share in a deficit from operations of the association in any calendar year in an amount greater than 1% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance. The aggregate amount not reimbursed must be reallocated among the remaining members in accordance with the method of determining participation after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. If the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance, the amount of the deficit must be allocated to each member in accordance with the method of determining participation. A member may not be assessed an amount that would jeopardize that member's solvency.

Section 16. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which [sections 1 through 20] apply must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member by the association, and these rates may not be considered excessive because they contain an amount reasonably calculated to recoup assessments paid by the member.

Section 17. Directors. The association must be governed by an annually elected board of directors. Eight directors must be elected by cumulative voting of members of the association, whose votes must be weighted in the proportion that a member's net direct premiums during the preceding calendar year bears to the net direct premiums of all the members during the preceding calendar

year. Three directors must be appointed by the commissioner as representatives of the medical profession, and the appointments must be made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association must be elected at a meeting of the members held at a time and place designated by the commissioner.

Section 18. Appeals and judicial review. For matters that the law or the plan of operation defines as appealable, an applicant for medical malpractice insurance, insured health care provider or health care facility, or association member may appeal to the commissioner within 30 days after a decision by or on behalf of the association. An order of the commissioner is subject to judicial review as provided in Title 33.

Section 19. Annual statements. The association shall file in the office of the commissioner on or before March 1 of each year a statement containing information with respect to the association's transactions, condition, operations, and affairs during the preceding calendar year. The statement must contain the matters and information and be in the format prescribed by the commissioner. The commissioner may at that time require the association to furnish additional information that the commissioner believes to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 20. Examination of association's affairs. The commissioner shall examine the affairs of the association at least annually.

Section 21. Section 33-11-105, MCA, is amended to read:

"33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any guaranty fund for claims arising out of the operations of the risk retention group.

(2) (a) ~~Except as provided in subsection (2)(b),~~ a risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms.

(b) *A risk retention group is excluded from participating in the joint underwriting association provided for in [section 5] and related financing mechanisms.*

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1."

Section 22. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 33, chapter 23, and the provisions of Title 33 apply to [sections 1 through 20].

Approved April 28, 2005

CHAPTER NO. 476

[HB 351]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO EXPLAIN THE REQUIREMENTS OF FIXING VALUES OF IMPROVEMENTS BY ARBITRATION; REQUIRING A LESSEE TO PROVIDE A LIST OF IMPROVEMENTS AND THEIR REASONABLE VALUE PRIOR TO RENEWAL OF A LEASE AND REQUIRING THAT THE INFORMATION BE PROVIDED TO A PARTY REQUESTING TO BID ON THE LEASE; CHANGING COURT VENUE FOR CONTESTING VALUES; AMENDING SECTIONS 77-6-302 AND 77-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-302, MCA, is amended to read:

“77-6-302. Compensation for improvements — actual costs. (1) *Prior to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease.* When another person becomes the lessee of the lands, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. *The department notification must include an explanation of the requirements of 77-6-306.* Failure to initiate the process within this time period results in all improvements becoming the property of the state.

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.”

Section 2. Section 77-6-306, MCA, is amended to read:

“77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department. The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located ~~or the district court of Lewis and Clark County for judicial review of the decision for judicial review of the decision.~~

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 477

[HB 374]

AN ACT INCREASING THE INCARCERATION AND FINE THAT MAY BE IMPOSED ON A PERSON FOR A FIRST THROUGH THIRD CONVICTION OF DRIVING WHILE UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

“61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and ~~shall be punished by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000.~~ The initial 24 hours of the imprisonment term must be served ~~in the county jail~~ and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) On a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months, *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine*

of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term must be served and served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.*

Section 2. Section 61-8-722, MCA, is amended to read:

“61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and ~~shall be punished by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 20 days and by a fine of not less than \$600 or more than \$2,000.~~

(2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000, *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and by a fine of not less than \$1,200 or more than \$2,000.* The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000.* The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.”

Approved April 28, 2005

CHAPTER NO. 478

[HB 385]

AN ACT REVISING THE LAW RELATING TO DRIVER'S LICENSE ELIGIBILITY; PROHIBITING THE ISSUANCE OF A LICENSE TO A PERSON WHO CANNOT PROVE THAT THE PERSON'S PRESENCE IN THE UNITED STATES IS AUTHORIZED UNDER FEDERAL LAW; PROVIDING FOR ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL WHOSE PRESENCE IN THE UNITED STATES IS TEMPORARILY AUTHORIZED UNDER FEDERAL LAW AND IMPOSING CERTAIN CONDITIONS ON RENEWAL AND EXPIRATION OF THAT LICENSE; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL; AMENDING SECTIONS 61-5-105, 61-5-107, 61-5-111, AND 61-5-125, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

~~(1)~~(1) who is under 16 years of age unless:

~~(a)~~(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

~~(b)~~(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

~~(2)~~(2) whose license or driving privilege is currently suspended or revoked in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

~~(3)~~(3) who is addicted to the use of alcohol or narcotic drugs;

~~(4)~~(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

~~(5)~~(5) who is required by this chapter to take an examination;

~~(6)~~(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

~~(7)~~(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; or

~~(8)~~(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway; or

(9) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; ~~and~~

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; *and*

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's

driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 3. Section 61-5-111, MCA, is amended to read:

“61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

- (i) a full-face photograph of the licensee in the size and form prescribed by the department;
- (ii) a distinguishing number issued to the licensee;
- (iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and
- (iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

- (i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and
- (ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or
- (iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was

previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) *Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.*

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(vi) *If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.*

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b), ~~and~~ (4)(c), *and* (4)(d), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) *A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.*

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be

suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 4. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; ~~and~~

(g) issuance of a duplicate driver's license; *and*

(h) *a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law."*

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 2 and 3] are effective July 1, 2006.

Section 6. Applicability. [This act] applies to driver's licenses issued on or after July 1, 2005, and to driver's licenses renewed on or after July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 479

[HB 386]

AN ACT ESTABLISHING QUALIFICATIONS FOR AN INDIVIDUAL APPOINTED AS THE COMMISSIONER OF POLITICAL PRACTICES; ESTABLISHING RESTRICTIONS ON THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING DEFINITIONS THAT APPLY TO THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THAT A GOVERNOR WHO REMOVES A COMMISSIONER OF POLITICAL PRACTICES FROM OFFICE STATE THE REASONS FOR REMOVAL IN WRITING; ELIMINATING THE PERIOD DURING WHICH AN INDIVIDUAL WHO SERVED AS COMMISSIONER OF POLITICAL PRACTICES WAS RESTRICTED FROM BECOMING A CANDIDATE FOR PUBLIC OFFICE; IDENTIFYING CONDITIONS REGARDING THE RECUSAL OF THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THE APPOINTMENT OF AND SETTING THE

QUALIFICATIONS FOR A DEPUTY TO SERVE WHEN THE COMMISSIONER OF POLITICAL PRACTICES IS RECUSED; AND AMENDING SECTIONS 13-27-111, 13-37-101, 13-37-102, 13-37-103, AND 13-37-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commissioner of political practices — qualifications. The individual appointed to serve as commissioner:

- (1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; and
- (2) on the date of appointment, must be registered to vote in Montana.

Section 2. Commissioner of political practices — restrictions. During the commissioner's term of office, the commissioner may not knowingly, as defined in 45-2-101:

- (1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;
- (2) participate in any political activity or in a political campaign;
- (3) make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;
- (4) attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;
- (5) participate in a matter pertaining to the commissioner's office that:
 - (a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or
 - (b) involves a relative of the commissioner.

Section 3. Section 13-27-111, MCA, is amended to read:

“13-27-111. Definitions. As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

- (1) “Commissioner” means the commissioner of political practices provided for in ~~13-37-101~~ 13-37-102.
- (2) “Paid signature gatherer” means a signature gatherer who is compensated in money for the collection of signatures.
- (3) “Person” has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.
- (4) “Signature gatherer” means an individual who collects signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention.”

Section 4. Section 13-37-101, MCA, is amended to read:

“13-37-101. Commissioner of political practices Definitions. ~~In As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

- (1) ~~“commissioner”~~ “Commissioner” means the commissioner of political practices created by 13-37-102, ~~unless the context clearly indicates otherwise.~~

(2) "Public office" has the meaning provided in 13-1-101.

(3) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

(4) "Relative" means a family member who is within the second degree of consanguinity or affinity to the commissioner."

Section 5. Section 13-37-102, MCA, is amended to read:

"13-37-102. Creation of office — removal. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee ~~comprised~~ *composed* of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for ~~his~~ *the governor's* consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. *The governor's decision to remove the commissioner must be stated in writing, and the sufficiency of such the governor's stated causes shall be for removing the commissioner is subject to judicial review.*

Section 6. Section 13-37-103, MCA, is amended to read:

"13-37-103. Term of office — ~~limitations on holding other office.~~ (1) ~~The~~ *Subject to the provisions of 13-37-104, the* individual selected to serve as ~~the~~ commissioner of political practices is appointed for a 6-year term, ~~but he is thereafter ineligible and may not be reappointed to serve as the commissioner of political practices.~~

(2) ~~The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.~~

Section 7. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties — recusal. (1) The commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(3)(b) ~~The commissioner may~~ inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter ~~which that~~ are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; *and*

~~(4)(c) The commissioner may~~ administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records ~~which~~ *that* are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in [section 1];

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply to [sections 1 and 2].

Approved April 28, 2005

CHAPTER NO. 480

[HB 395]

AN ACT PROVIDING THAT A PRIVATE INSURER OR PUBLIC ASSISTANCE PROGRAM IS RESPONSIBLE FOR THE COSTS OF PRECOMMITMENT DETENTION, EXAMINATION, AND TREATMENT OF A RESPONDENT IN A MENTAL HEALTH COMMITMENT PROCEEDING BEFORE THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR THOSE COSTS; AMENDING SECTION 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of ~~precommitment examination, detention, treatment, and psychiatric precommitment examination, detention, treatment, and~~ taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid ~~by the county in which the person resides at the time~~

~~that the person is committed pursuant to subsection (2)(a).~~ The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) ~~(a) The county of residence shall also pay all The costs of precommitment expenses, including transportation to a mental health facility, incurred in connection with the psychiatric detention, precommitment psychiatric examination, and precommitment custody psychiatric treatment of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the following entities in the listed order of priority:~~

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

(b) ~~However, the~~ The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 2. Cost study. The department of public health and human services shall work with county attorneys and county commissioners to ascertain the actual precommitment costs of involuntary commitments and present that information and any findings and recommendations to the 2007 legislature through an appropriate interim committee.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 481

[HB 411]

AN ACT CLARIFYING THAT TOBACCO TAX REVENUE DEDICATED TO SUPPORT THE OPERATION AND MAINTENANCE OF VETERANS' HOMES IS RESTRICTED TO THAT USE; AMENDING SECTION 10-2-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-417, MCA, is amended to read:

“10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services *for veterans’ homes* must be used to support the operation and maintenance of the Montana veterans’ homes programs ~~or for the health and medicaid initiatives specified by 53-6-1201.~~

(2) The legislature shall appropriate from the account established in 16-11-119(1)(a) the funds required for the operation and maintenance of the Montana veterans’ homes ~~or required for the health and medicaid initiatives specified by 53-6-1201.~~”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 482

[HB 414]

AN ACT ESTABLISHING A YOUTH INTERVENTION AND PREVENTION ACCOUNT TO BE USED FOR THE YOUTH COURT INTERVENTION AND PREVENTION PROGRAMS; PROVIDING FOR FUND TRANSFERS TO THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 41-5-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth intervention and prevention account in the state special revenue fund. The money in the account must be used for the youth court intervention and prevention programs authorized in Title 41, chapter 5, part 20. All unexpended funds remaining at the end of a fiscal year in the accounts established under 41-5-130(6) must be transferred to the account established in this subsection.

(2) The youth intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court for the purposes of 41-5-2003(3). The office of the court administrator shall administer the account in accordance with rules adopted by the department of corrections.

Section 2. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; [section 1]; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 3. Section 41-5-130, MCA, is amended to read:

"41-5-130. Participating and nonparticipating jurisdictions. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program.

(2) A jurisdiction that elects to participate in the program may expend funds from a juvenile placement fund for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department.

(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements *and for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department. At the end of a fiscal year, the balance in the accounts established under this subsection must be transferred to the youth intervention and prevention account established in [section 1].*"

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 20, and the provisions of Title 41, chapter 5, part 20, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to unexpended funds in the accounts established under 41-5-130(6) on June 30, 2004.

Approved April 28, 2005

CHAPTER NO. 483

[HB 418]

AN ACT CLARIFYING THE DEFINITION OF "SUPERVISORY EMPLOYEE" IN THE CONTEXT OF COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES; AMENDING SECTION 39-31-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) (a) "Supervisory employee" means ~~any an individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.~~

having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(b) *The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any*

other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 484

[HB 421]

AN ACT ALLOWING A QUALIFIED NONRESIDENT CHILD OF A RESIDENT TO PURCHASE CERTAIN NONRESIDENT HUNTING AND FISHING LICENSES AT A REDUCED RATE; CREATING A CLASS B-15 NONRESIDENT CHILD'S ELK LICENSE FOR USE ONLY BY A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; ESTABLISHING THE CONDITIONS AND RATE OF THE LICENSES AVAILABLE TO A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Nonresident child of resident allowed to purchase nonresident licenses at reduced cost. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is the natural or adopted child of a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase a Class B nonresident fishing license, a Class B-1 nonresident upland game bird license, and a Class B-7 nonresident deer A tag at the reduced cost specified in subsection (2) and may purchase a Class B-15 nonresident child's elk license as provided in [section 2]. This section does not allow a nonresident child of a resident to purchase nonresident combination licenses at a reduced price.

(2) The fee for a nonresident license purchased pursuant to subsection (1) is twice the amount charged for an equivalent resident license. The nonresident child shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 [and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) if the nonresident child purchases a hunting license].

(3) To qualify for a license pursuant to subsection (1), a nonresident child of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

- (a) a birth certificate verifying the applicant's birth in Montana;
- (b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general education development test in Montana; and
- (c) proof that the applicant has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102.

(4) A qualified nonresident child of a resident may purchase licenses pursuant to subsection (1) for up to 6 license years after receiving a diploma or passing the general education development test as provided in subsection (3)(b).

(5) A nonresident child of a resident who has been issued a hunting license pursuant to this section is not eligible to apply for or be issued any nonresident special permit.

(6) A nonresident child of a resident who has been issued a hunting license pursuant to this section must be accompanied by a licensed resident family member while hunting in the field.

Section 2. Class B-15 nonresident child's elk license. (1) Except as otherwise provided in this chapter, a nonresident child of a resident who is qualified to purchase licenses pursuant to [section 1] may purchase a Class B-15 nonresident child elk license for twice the amount charged for a resident Class A-5 elk tag.

(2) A Class B-15 license entitles the holder to hunt elk in areas designated by the commission, at the times and upon the terms set forth by the commission, and to possess the carcass of an elk authorized by the license as set forth in department rules.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [sections 1 and 2].

Section 4. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then the bracketed language in [section 1(2) of this act] is void.

Section 5. Effective date. [This act] is effective March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 485

[HB 423]

AN ACT APPROPRIATING \$500,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR THE ACQUISITION OF LAND AND THE CONSTRUCTION OF A FACILITY FOR CREATION OF THE GREAT PLAINS DINOSAUR PARK IN MALTA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, because of their relatively remote locations, northeastern Montana communities are uniquely challenged when it comes to attracting tourists and promoting economic development; and

WHEREAS, the Great Plains Dinosaur Park will showcase the paleontological treasures that have been found in northeastern Montana; and

WHEREAS, currently, there is no facility in the area large enough to accommodate the newly discovered dinosaur exhibits; and

WHEREAS, currently, there is no facility in the area large enough to support the growth of the research faculty to a size appropriate for meeting the scientific demands posed by paleontological study; and

WHEREAS, a park of this size may attract tourism into the area, infusing much-needed funds into the local economy; and

WHEREAS, the creation of new jobs may contribute to greater economic vitality in the area.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated \$500,000 from the state general fund to the department of commerce for the biennium beginning July 1, 2005, to purchase the land and purchase or construct a facility for a park in Malta, Montana, to display the products of paleontological research in the area and to provide research facilities for paleontologists and complete necessary building upgrades. The department of commerce may lease the property to a private, nonprofit entity for the purpose of operating the park.

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 486

[HB 428]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING STANDARD PROCEDURES FOR ISSUING AND APPEALING ADMINISTRATIVE ORDERS; PROHIBITING THE DEPARTMENT FROM WAIVING A PENALTY ASSESSED UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IF A PERSON OR OPERATOR FAILS TO ABATE THE VIOLATION IN ACCORDANCE WITH A NOTICE OR ORDER; PROVIDING FOR A WRITTEN RELEASE OF LIABILITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; PROVIDING PENALTIES FOR VIOLATIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AMENDING VENUE PROVISIONS UNDER METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-254, 82-4-361, AND 82-4-441, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-254, MCA, is amended to read:

“82-4-254. Violation — penalty — waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules ~~adopted~~ or orders ~~issued~~ ~~adopted~~ under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay ~~a civil~~ *an administrative* penalty of not less than \$100 or more than \$5,000 for the violation and an additional ~~civil~~ *administrative* penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues. The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the ~~civil~~ penalty for a minor violation of this part, a rule ~~adopted~~ or an order issued ~~adopted~~ under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. *The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251.* The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) ~~To assess an administrative penalty under this section, the~~ The department shall ~~notify the person or operator of the violation~~ issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the board. By ~~filing~~ submitting to the board a written request within ~~20~~ 30 days of receipt service of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. ~~The department shall issue a statement of proposed penalty no more than 10 days after issuing the notice of violation.~~ On receipt of a request, the board shall schedule a hearing. After a hearing, the board shall make findings of fact, ~~shall and~~ issue a written decision as to the occurrence of the violation and the amount of penalty warranted. ~~if~~ If the board finds that the violation occurred, the amount of and a penalty is warranted, and it shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty within 30 days of the order expiration of the period for requesting a hearing.

(b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain judicial review of the ~~assessment~~ order, the person or operator shall submit with the any assessed penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection (3)(a) or who fails to pay the any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation ~~or~~ and penalty determinations.

(c) ~~These penalties~~ Penalties provided for in this section are recoverable in any action brought in the name of the state of Montana by the attorney general by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, or the district having jurisdiction over the defendant.

(4) The ~~attorney general shall, upon request of the director of the~~ department, sue for the recovery of the penalties provided for in this section and department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order ~~adopted~~ *issued* under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) *Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed.*

Section 2. Section 82-4-361, MCA, is amended to read:

“82-4-361. Violation — penalties — waiver. *(1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a*

violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

~~(1)(2)~~ (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative ~~civil~~ penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative ~~civil~~ penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule *adopted* or an order ~~adopted~~ issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule *adopted* or an order ~~adopted~~ issued under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum *administrative* penalty is \$5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

~~(2)(4)~~ (4) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

~~(3)(5)~~ (5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

~~(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator, by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the~~

~~findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in district court.~~

(6) (a) *In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.*

(b) *An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.*

~~(5)(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County."~~

Section 3. Section 82-4-441, MCA, is amended to read:

"82-4-441. ~~Penalty~~ Administrative and judicial penalties — enforcement. (1) *When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.*

~~(4)(2)~~ (2) *By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:*

(a) ~~a civil~~ *an administrative* penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) ~~an additional civil~~ *an administrative* penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues ~~following the service of notice of the violation.~~

(3) *The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules*

adopted or orders issued under this part or provisions of a permit, and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(2)(4) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

- (a) the nature, circumstances, extent, and gravity of the violation;
- (b) the violator's prior history of violations within the past 3 years;
- (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;
- (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and
- (e) other matters that justice may require to decrease the amount of penalty.

~~(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located.~~

(5) (a) *In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.*

(b) *An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.*

~~(4)(6)~~ The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. *Actions for injunctions or penalties must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.*

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."

Section 4. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 82-4-441 in both House Bill No. 429 and [this act] are void and 82-4-441 must read as follows:

"82-4-441. Penalty Administrative and judicial penalties — enforcement. (1) *When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.*

~~(1)(2)~~ By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) ~~a civil~~ an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional ~~civil~~ administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues ~~following the service of notice of the violation.~~

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit, and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3 of House Bill No. 429].

~~(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

~~(a) the nature, circumstances, extent, and gravity of the violation;~~

~~(b) the violator's prior history of violations within the past 3 years;~~

~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~

~~(c) other matters that justice may require to decrease the amount of penalty.~~

~~(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located.~~

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

~~(4)(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.~~

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Contingent voidness. (1) If any portion of [section 1] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 1] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Approved April 28, 2005

CHAPTER NO. 487

[HB 429]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) After the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

Section 2. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 3. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

Section 4. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 82, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 5. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the

rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than ~~12 months~~ 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider *the penalty factors in [section 1]:*

~~(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;~~

~~(ii) the alleged violator's full compliance history and good faith efforts to comply;~~

~~(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;~~

~~(iv) payment by the violator of penalties previously assessed for the same violation;~~

~~(v) the economic benefit of noncompliance;~~

~~(vi) the seriousness of the violation; and~~

~~(vii) other matters as justice may require.~~

(e) *The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 6. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties — ~~venue out-of-state litigants~~ — effect of action — presumption of continuing violation under certain circumstances. (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 ~~per~~ *for each* violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~ *or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program.”

Section 7. Section 75-2-514, MCA, is amended to read:

“75-2-514. Civil penalties — venue for actions to recover disposition of civil penalties. (1) (a) A district court may assess a civil penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

(3) *Penalties provided for in subsection (1) are recoverable in an action brought by the department. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.”*

Section 8. Section 75-2-515, MCA, is amended to read:

“75-2-515. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator’s agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, or an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider *the penalty factors in [section 1].*:

- ~~(i) the seriousness of the violation;~~
- ~~(ii) the duration of the violation;~~
- ~~(iii) any economic benefit derived from the violation;~~
- ~~(iv) the person's good faith efforts to comply with the requirements in question;~~
- ~~(v) the person's compliance history;~~
- ~~(vi) the person's ability to pay a penalty; and~~
- ~~(vii) other matters as justice may require.~~

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.”

Section 9. Section 75-5-611, MCA, is amended to read:

“75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

- (a) the provision of statute, rule, permit, or approval alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the specific nature of corrective action that the department requires;
- (d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and
- (e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

- (i) does not involve assessment of an administrative penalty; or
- (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the *penalty factors in [section 1] criteria stated in 75-5-631(4)* and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 10. Section 75-5-631, MCA, is amended to read:

“75-5-631. Civil penalties — injunctions not barred — venue. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain enforcement proceedings in the name of the state. *Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(4) ~~In an action seeking determining the amount of penalties under this section, the department district court shall take into account the penalty factors in [section 1]. following factors in determining an appropriate settlement or judgment, as appropriate:~~

~~(a) the nature, circumstances, extent, and gravity of the violation; and~~
~~(b) with respect to the violator, the violator's ability to pay and prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.”~~

Section 11. Section 75-6-109, MCA, is amended to read:

“75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (a) An action initiated under this part may include an administrative penalty not to exceed:

(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and

(ii) \$500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the *penalty factors in [section 1] criteria stated in 75-6-114* and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.”

Section 12. Section 75-6-114, MCA, is amended to read:

“75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000. *The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the *penalty factors in [section 1]* following factors in determining an appropriate settlement or judgment, as appropriate:

(a) ~~the nature, circumstances, extent, and gravity of the violation; and~~

(b) ~~with respect to the violator, the violator’s ability to pay, prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator’s action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.~~

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.”

Section 13. Section 75-10-228, MCA, is amended to read:

“75-10-228. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

~~(3)~~(4) Fines and penalties collected for violations of this part must be deposited in the solid waste management account provided for in 75-10-117.”

Section 14. Section 75-10-417, MCA, is amended to read:

“75-10-417. Civil penalties. (1) ~~Any~~ A person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes a separate violation. *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. *An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section ~~shall~~ *must* be deposited in the state general fund.”

Section 15. Section 75-10-424, MCA, is amended to read:

“75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part; or a rule adopted under this part; an administrative penalty, not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider *the penalty factors in [section 1]:*

~~(a) the gravity and the number of violations;~~

~~(b) the degree of care exercised by the alleged violator;~~

~~(c) whether significant harm resulted to the public health or the environment; and~~

~~(d) the degree of potential significant harm to the public health or the environment.~~

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may ~~seek~~ *file an action* to recover the amount ~~in an appropriate not paid. The action must be brought district court in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.”

Section 16. Section 75-10-542, MCA, is amended to read:

“75-10-542. Penalties. (1) A person who ~~willfully~~ *purposely or knowingly* violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined *an amount* not to exceed \$250, *be* imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to a civil penalty of not more than \$50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

(3) *Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.”*

Section 17. Section 75-10-1222, MCA, is amended to read:

“75-10-1222. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator’s agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1221.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department’s order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.

(5) (a) An action initiated by the department under this section may include an administrative penalty not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in 75-10-1203.

(b) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section."

Section 18. Section 75-10-1223, MCA, is amended to read:

"75-10-1223. Penalties and fines. (1) A person who disposes of septage in violation of 75-10-1210 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500.

(2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a civil penalty of not more than \$500. Each day that violation of this part, a rule of the department, or an order issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of the county in which the violation occurred may file an action to collect the penalty.

(b) *Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Penalties collected by the department under this section must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and penalties collected by a county must be deposited in the general fund of the county."

Section 19. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil penalties. (1) (a) ~~Any~~ A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 ~~per~~ *for each* violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation

occurred shall petition the district court to impose, assess, and recover the civil penalty. *An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.”

Section 20. Section 75-11-516, MCA, is amended to read:

“75-11-516. Civil penalties. (1) (a) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. *Penalties are also recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund.”

Section 21. Section 75-11-525, MCA, is amended to read:

“75-11-525. Administrative penalties for violations — appeals — venue for hearings. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator’s agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and
- (h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision allegedly violated;
- (b) the facts that constitute the alleged violation;
- (c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and
- (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. *The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(6) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund.”

Section 22. Section 75-20-408, MCA, is amended to read:

“75-20-408. Penalties for violation of chapter — civil action by attorney general actions to enforce. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof of the certificate under 75-20-304(2) or, having first obtained a certificate, constructs, operates, or maintains a facility ~~other than~~ *not* in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted ~~thereunder~~ *under this chapter* or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted ~~thereunder~~ *under this chapter* or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than \$10,000 for each violation. *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(b) Each day of a continuing violation constitutes a separate offense.

(c) ~~The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana. Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

(2) Whoever *purposely* or knowingly ~~and willfully~~ violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it ~~may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana, if mutually agreed on by the parties in the action, or in the district court of the county in which the violation occurred or imminent violation will occur,~~ for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued ~~hereunder~~ *under this chapter*. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order ~~shall must~~ be granted without bond.

~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.~~

~~(5)~~(4) All fines and penalties collected ~~shall must~~ be deposited in the state special revenue fund for the use of the department in administering this chapter.”

Section 23. Section 76-4-109, MCA, is amended to read:

“76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine ~~of~~ *in an amount* not to exceed \$1,000.

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty *in an amount* not to exceed \$1,000. Each day of violation constitutes a separate violation.

(b) *Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.”

Section 24. Section 82-4-141, MCA, is amended to read:

“82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided in this section. These penalties ~~shall be~~ are recoverable in ~~any~~ an action brought in the name of the state of Montana by the ~~attorney general~~ department in the district court of the first judicial district, ~~of this state in and for the county of~~ Lewis and Clark County, or in the district court having jurisdiction of the defendant.

(2) ~~The department may attorney general shall, upon the request of the director, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary injunction, or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.~~

(3) A person who ~~willfully~~ *purposely or knowingly* violates any of the provisions of this part or any determination or order adopted under this part ~~which~~ that has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

(4) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].*”

Section 25. Section 82-4-254, MCA, is amended to read:

“82-4-254. Violation — penalty — waiver. (1) (a) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who ~~willfully~~ *purposely or knowingly* authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. ~~Any~~ A person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues.

(b) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].*

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. By filing a written request within 20 days of receipt of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after issuing the notice of violation. After a hearing, the board shall make findings of fact, shall issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in ~~any an~~ action brought ~~in the name of the state of Montana~~ by the ~~department attorney general~~ in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.*

(4) ~~The attorney general shall, upon request of the director of the department may, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:~~

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who ~~willfully~~ *purposely or knowingly* violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) ~~Any~~ A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) ~~Any~~ A person who except as permitted by law ~~willfully~~ *purposely or knowingly* resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both."

Section 26. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation — penalties — waiver. (1) (a) The department may assess an administrative civil penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who ~~willfully~~ *purposely or knowingly* authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

(2) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].* ~~The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

- ~~(a) the nature, circumstances, extent, and gravity of the violation;~~
- ~~(b) the violator's prior history of violations;~~
- ~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~
- ~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~
- ~~(e) other matters that justice may require.~~

(3) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator, by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in district court.

(5) Legal actions for injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County."

Section 27. Section 82-4-441, MCA, is amended to read:

"82-4-441. Penalty — enforcement. (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

- (a) a civil penalty of not less than \$100 or more than \$1,000 for the violation; and
- (b) an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation.

(2) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].* ~~The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

- ~~(a) the nature, circumstances, extent, and gravity of the violation;~~
- ~~(b) the violator's prior history of violations within the past 3 years;~~
- ~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~
- ~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~
- ~~(e) other matters that justice may require to decrease the amount of penalty.~~

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action*, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action*, or in the district court of the county in which the opencut mine is located."

Section 28. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 75 and Title 76, and the provisions of Title 75 and Title 76 apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [sections 3 and 4].

Section 29. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 30. Contingent voidness. (1) If any portion of [section 3] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 25] and the reference in [section 3(4)] to 82-4-254 are void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Section 31. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 488

[HB 431]

AN ACT REVISING THE REQUIREMENTS FOR CREATING A RURAL IMPROVEMENT DISTRICT; REQUIRING THAT A RESOLUTION AND NOTICE OF INTENTION TO CREATE A DISTRICT IN WHICH RELATED IMPROVEMENTS COMPOSE A LARGER PROJECT INCLUDE THE FULL SCOPE, INCLUDING COSTS AND IMPACTS, OF THE RELATED OR LARGER PROJECT; REVISING THE REQUIREMENTS FOR A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT; REVISING WHEN A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT IS SUFFICIENT TO BAR THE PROCEEDINGS; RESTRICTING THE AUTHORITY OF THE COUNTY COMMISSIONERS TO OVERRULE THE PROTESTS; AND AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, AND 7-12-2112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2103, MCA, is amended to read:

“7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating ~~any a~~ special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention ~~to do so~~.

(2) The resolution ~~shall~~ *must*:

(a) designate the number of ~~such~~ *the* district;

(b) describe the boundaries ~~thereof~~ *of the district*;

(c) state ~~therein~~ *in the resolution* the general character of the improvements ~~which that~~ *are to be made*;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost ~~thereof~~ *of the work*; ~~and~~

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district; *and*

(f) *if applicable, provide any additional information required to be included in the notice under 7-12-2105(3)(a).*

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of

streets and rights-of-way or portions ~~thereof~~ *of streets and rights-of-way*, and it may exempt any of the work already done upon a street to the official grade.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. *If one or more of the improvements proposed to be made or acquired by purchase are related to each other or are part of a larger project, the notice must describe the entire scope of the related or larger project, including the estimated costs of all related improvements, the method or methods by which these costs will be assessed, the impacts on property rights, and other actual or potential costs reasonably related to the proposed improvement.*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.”

Section 3. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district. (1) At any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the ~~extending or~~ *creation or extension* of the district to be assessed, or both. The protest must be in writing, ~~and identify the property in the district owned by the protestor, and be signed by all owners of the property.~~ The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(2) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 4. Section 7-12-2112, MCA, is amended to read:

“7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), ~~no~~ further proceedings ~~shall~~ *may not* be taken for a period of ~~6 months~~ *6 months* from the date when ~~said~~ a protest was received by the county clerk ~~when~~ *if* the board of county commissioners finds that ~~such~~ *the* protest is made by:

(a) the owners of property ~~in~~ *within* the ~~proposed~~ district ~~to be assessed for more having projected assessments, when aggregated, representing not less than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention~~ *total projected assessments for property within the district;*

(b) *the owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of the property within the district; or*

(c) *not less than 50% of the owners of property within the district.*

(2) ~~In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board.~~

(2) If the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board if:

(a) the improvements are ordered by the department of environmental quality or the federal environmental protection agency; or

(b) the governing body makes written findings after a public hearing and public comment, based on evidence in the record, that the proposed improvements protect public health or the environment, mitigate harm to the public health or environment, and are achievable under current technology.”

Approved April 28, 2005

CHAPTER NO. 489

[HB 435]

AN ACT ESTABLISHING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM TO ENCOURAGE MONTANA'S MOST TALENTED HIGH SCHOOL GRADUATES OR MONTANA HIGH SCHOOL GRADUATES WITH FINANCIAL NEEDS TO ACQUIRE A POSTSECONDARY EDUCATION BY PROVIDING STUDENT SCHOLARSHIPS BASED ON MERIT OR FINANCIAL NEED TO STUDENTS ATTENDING IN-STATE POSTSECONDARY INSTITUTIONS AND CERTAIN OUT-OF-STATE PUBLIC COLLEGES OR UNIVERSITIES OR, WITH DONATIONS FROM PRIVATE SOURCES, TO STUDENTS ATTENDING MONTANA PRIVATE COLLEGES IF SO DESIGNATED BY THE DONOR; ESTABLISHING A GOVERNOR'S SCHOLARSHIP ADVISORY COUNCIL APPOINTED BY THE GOVERNOR TO ASSIST THE BOARD OF REGENTS OF HIGHER EDUCATION IN AWARDING AND ADMINISTERING THE SCHOLARSHIP PROGRAM; PROVIDING ANNUAL SCHOLARSHIPS BASED ON VARIOUS CRITERIA; PROVIDING FOR REALLOCATION OF MONEY TO OTHER SCHOLARSHIPS IF A HIGH SCHOOL DOES NOT HAVE AN ELIGIBLE STUDENT OR IF A RECIPIENT BECOMES INELIGIBLE; PROVIDING THAT SCHOLARSHIP FUNDING IS

A STATE OBLIGATION; ESTABLISHING STUDENT ELIGIBILITY CRITERIA; AUTHORIZING THE BOARD OF REGENTS TO ADOPT PROCEDURES TO IMPLEMENT THE MERIT-BASED AND FINANCIAL NEED-BASED SCHOLARSHIPS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, if Montana is to achieve success in attracting new businesses and in promoting a healthier climate for economic growth to provide quality, high-paying jobs for Montana citizens, it is essential that Montana's most talented high school graduates become the "engines" that drive the state's future economic growth; and

WHEREAS, the purpose of establishing the Governor's Postsecondary Scholarship Program is to provide Montana residents with greater access to Montana's postsecondary institutions and Montana's private colleges, through scholarship grants based on academic achievement and financial need, with a goal of alleviating student debt burdens, which will allow more Montanans to stay in the state upon graduation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3 and 5 through 7] may be cited as the "Governor's Postsecondary Scholarship Program".

Section 2. Governor's postsecondary scholarship program — duties of council — duties of board. (1) There is a governor's postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from a three-member council created in [section 4].

(2) The council shall review the lists and applications submitted in accordance with procedures adopted by the board pursuant to [section 5]. From those lists and applications, the council shall prepare and submit a final list of qualified scholarship recipients to the board. Following consultation with the council, the board shall pay for scholarships awarded to qualified recipients.

(3) The board may accept donations from public or private sources and shall distribute these funds to the scholarship program and in accordance with the criteria determined by the board in consultation with the council.

(4) Funds from public sources may not be used to pay for scholarships to students enrolled in Montana private colleges.

(5) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to be used by the board to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

Section 3. Definitions. As used in [sections 1 through 3 and 5 through 7], the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college.

(3) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(4) "Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program.

(5) "Council" means the governor's postsecondary scholarship advisory council created in [section 4].

(6) "Montana private college" means a nonprofit private educational institution as defined in 15-30-163(3)(b).

(7) "Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree.

(8) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(9) "Scholarship" means a payment toward tuition and mandatory fees, excluding room and board, rounded up to the nearest dollar.

(10) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended.

Section 4. Governor's postsecondary scholarship advisory council

— **terms.** (1) There is a three-member governor's postsecondary scholarship advisory council appointed by the governor.

(2) Members shall serve staggered 3-year terms and must include:

(a) at least one member with experience in financial aid at a postsecondary institution; and

(b) at least one member with experience in secondary or postsecondary education.

(3) A presiding officer must be selected by the council from among its membership at the first meeting of the council.

(4) The council shall:

(a) advise the board on issues related to the governor's postsecondary scholarship program and other student assistance programs; and

(b) report to the governor annually or at any time upon request by the governor.

(5) The council is attached to the commissioner of higher education for administrative purposes only, as provided in 2-15-121, and members are entitled to compensation as provided in 2-15-122(5).

Section 5. Administration of scholarship program.

(1) The commissioner of higher education, under the authority of the board and in consultation with the council, shall administer the governor's postsecondary scholarship program.

(2) The board shall adopt procedures to implement the requirements of [sections 1 through 3 and 5 through 7], including but not limited to:

(a) procedures for obtaining lists from Montana accredited high schools, including accredited nonpublic high schools, of those high school seniors who are eligible to receive a governor's postsecondary scholarship;

(b) when possible, procedures for obtaining lists of nontraditional students or recipients of general educational development equivalency diplomas in the current year;

(c) procedures for an application process for at-large students;

(d) procedures regarding the application process for eligible students to obtain a scholarship and regarding notification to students, parents, teachers, and school administrators of all criteria, procedures, and timelines for applying for the scholarships;

(e) procedures for entering into cooperative agreements with Montana tribal community colleges;

(f) procedures for the annual disbursement of money to postsecondary institutions and Montana private colleges to pay for scholarships awarded to eligible students.

(3) The board shall develop procedures:

(a) to transmit the payment for each scholarship to the financial officer of the postsecondary institution or the Montana private college;

(b) to be used by the postsecondary institution or the Montana private college in certifying the eligibility status of each student who receives a scholarship.

(4) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, by a date established by the board, a report that includes an audit of the postsecondary institution's or Montana private college's administration of the scholarships and a complete accounting of scholarship funds.

(5) The board shall establish procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the scholarship; and

(b) to ensure compliance with [section 2(4)] if a student transfers from a postsecondary institution to a Montana private college.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

Section 6. Types and amounts of scholarships — recipient qualifications. (1) Following consultation with the council and selection of eligible recipients, the board shall pay the costs of a governor's postsecondary scholarship at a postsecondary institution or, subject to the provisions of [section 2(4)], at a Montana private college in which a recipient has enrolled.

(2) Subject to the provisions of subsections (6), (7), and (9), scholarships must be provided in each fiscal year to eligible recipients as follows:

(a) merit-based scholarships of \$2,000 a year awarded to 40 at-large students who enroll in 4-year postsecondary institutions;

(b) a merit-based scholarship of \$1,000 a year, which may be awarded to one graduate of each of Montana's accredited high schools, including accredited nonpublic high schools, who enrolls in a 4-year postsecondary institution;

(c) a merit-based scholarship of \$1,000 a year, which may be awarded to one graduate of each of Montana's accredited high schools, including accredited nonpublic high schools, who enrolls in a 2-year postsecondary institution;

(d) merit-based scholarships of \$1,000 a year awarded to 70 at-large students who enroll in 2-year postsecondary programs;

(e) a scholarship of \$1,000 a year based on recognition of financial need awarded to 180 students, including students who return to school as nontraditional students, who enroll in a 2-year postsecondary program;

(f) scholarships of \$1,000 a year based on recognition of financial need awarded to 100 students, including students who return to school as nontraditional students, who enroll in 2-year postsecondary programs and who major in the area of health sciences; and

(g) scholarships of \$1,000 a year based on financial need awarded to 220 students, including students who return to school as nontraditional students, who enroll in 2-year postsecondary programs and who are seeking a certificate or degree in the field of technology.

(3) (a) A recipient who is awarded a scholarship to attend a 2-year postsecondary program is eligible to receive the scholarship for a maximum of 2 consecutive years, provided the recipient meets the requirements provided in [section 7].

(b) A recipient who is awarded a scholarship to attend a 4-year postsecondary institution or, subject to the availability of private funds, to a Montana private college is eligible to receive the scholarship for a maximum of 4 consecutive years, provided the recipient meets the requirements provided in [section 7].

(4) The recipient of a scholarship award is not precluded from receiving other financial aid, awards, or scholarships that would result in an overpayment of financial aid as determined by the postsecondary institution's or Montana private college's financial aid office.

(5) Each scholarship must be distributed in equal installments that correspond with the terms of the postsecondary institution's or the Montana private college's academic year.

(6) If a Montana high school has no graduates who qualify for a scholarship awarded under subsection (2)(b) or (2)(c) or if a recipient of a scholarship becomes ineligible for renewal of a scholarship, the money for those scholarships reverts and may be reallocated by the commissioner of higher education to scholarships for at-large students.

(7) Except when a donor of private funds designates that scholarship funds must be given to students attending a Montana private college, the board, following consultation with the council, shall establish criteria and procedures for distributing funds from private sources for scholarships to students enrolled in postsecondary institutions. Funds from private sources may not be used as an offset to general fund appropriations.

(8) Except when a donor of private funds designates that scholarship funds must be given to students attending a Montana private college, scholarship awards are determined solely by the board following consultation with the council. Scholarship awards are not subject to appeal.

(9) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state.

This section may not be construed to require the board to provide a scholarship to an eligible student without a line item appropriation to the board.

Section 7. Eligibility requirements — basic residency requirements. (1) To be eligible to receive a scholarship, an entering freshman student seeking a certificate or an associate or baccalaureate degree at a postsecondary institution:

(a) must be classified as a Montana resident for in-state tuition under the board's policy; and

(b) for purposes of a scholarship based on financial need, must have met the admission requirements established by board policy, demonstrated financial need by completing the free application for federal student aid, and be enrolled in a 2-year postsecondary program; or

(c) for purposes of a merit-based scholarship, must meet the admission requirements established by board policy and those eligibility criteria established by the board, upon recommendation by the council, at least part of which must include a grade point average or a numerical score on a standardized college admission test, must be admitted, enrolled, or classified as an undergraduate student in a certificate program or an associate or baccalaureate degree program at a postsecondary institution, and must have completed the free application for federal student aid, which may not result in expected family contributions exceeding the cost of attendance.

(2) To be eligible to receive a scholarship, an entering freshman student seeking a certificate or an associate or baccalaureate degree at a Montana private college:

(a) must be classified as a Montana resident for in-state tuition under the board's policy; and

(b) must meet the admission requirements and eligibility criteria established by the admissions office of the Montana private college.

(3) To be eligible to receive a scholarship, a sophomore student seeking a certificate or an associate or baccalaureate degree at a 2-year or 4-year postsecondary institution or a Montana private college must meet the residency requirement provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

(a) (i) for a student who is receiving a scholarship based on financial need and who is attending a 2-year postsecondary program, must have completed all first year requirements for an associate degree, including satisfactory academic progress; or

(ii) for a student who is receiving a merit-based scholarship and who is attending a 4-year postsecondary institution or a Montana private college, must have completed a minimum of 30 semester hours at the postsecondary institution or Montana private college;

(b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed 30 semester hours; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(4) Except as provided in subsection (6), to be eligible to receive a scholarship, a junior student seeking a baccalaureate degree at a postsecondary institution or a Montana private college must meet the residency requirement

provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

- (a) must have completed a minimum of 60 semester hours;
- (b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed 60 semester hours; and
- (c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(5) Except as provided in subsection (6), to be eligible to receive a scholarship, a senior student seeking a baccalaureate degree at a postsecondary institution or a Montana private college must meet the residency requirement provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

- (a) must have completed a minimum of 90 semester hours;
- (b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed a minimum of 90 semester hours; and
- (c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(6) A student who receives a 4-year scholarship to attend an in-state postsecondary institution as a freshman and sophomore may transfer the scholarship to attend a public out-of-state college or university as a junior or senior if the transfer to the public out-of-state college or university is necessary to complete the final 2 years of a 4-year degree program.

(7) (a) If an at-large student fails to maintain a cumulative grade point average of at least 2.5 at the end of the school term in which the student completed the required semester hours, the scholarship is terminated.

(b) A student may appeal a termination based on extenuating circumstances as determined through procedures established by the board.

(8) A student is ineligible to receive a governor's postsecondary scholarship if the student:

- (a) has been awarded a Montana university system honor scholarship;
- (b) is a male and has failed to meet the federal Title IV selective services registration requirements;
- (c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or
- (d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 9. Implementation. (1) The provisions of [this act] may not be implemented without a line item appropriation provided for the purposes of [this act].

(2) If the appropriation provided pursuant to subsection (1) is insufficient to fully fund the scholarship program provided for in [this act], after meeting the

obligation to provide continuing scholarships for returning sophomore, junior, and senior students, the board shall reduce the number of scholarships awarded in each category under [section 6(2)] in proportion to the amount of money appropriated and notify the office of budget and program planning of the reduction. Following consultation with the council, the board shall adopt procedures to implement this section.

Section 10. Codification instruction. (1) [Sections 1 through 3 and 5 through 7] are intended to be codified as an integral part of Title 20, chapter 26, and the provisions of Title 20, chapter 26, apply to [sections 1 through 3 and 5 through 7].

(2) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 4].

Section 11. Effective date — applicability. [This act] is effective on passage and approval and applies to the 2006 academic year.

Approved April 28, 2005

CHAPTER NO. 490

[HB 438]

AN ACT PROVIDING BRAILLE SERVICES TO A BLIND OR VISUALLY IMPAIRED CHILD; DETERMINING THE NEED FOR BRAILLE INSTRUCTION; REQUIRING THE BOARD OF PUBLIC EDUCATION TO ADOPT STANDARDS FOR PERSONNEL WHO PROVIDE BRAILLE INSTRUCTION; REQUIRING A SCHOOL DISTRICT TO ENSURE THE AVAILABILITY OF TEXTBOOKS THAT COMPLY WITH FEDERAL LAW IN A TIMELY MANNER; REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A BRAILLE ELECTRONIC EQUIPMENT LOAN PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-602, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of *Star Student*, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the “Blind Persons’ Literacy Rights and Education Act”.

Section 2. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) “Blind or visually impaired child” means an individual who is eligible for special education services and who:

(a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

(b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a).

(2) “Braille” means the system of reading and writing through touch, commonly known as standard English Braille.

(3) “Individualized education program” means a written statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11).

Section 3. Individualized education program for child with blindness. The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

Section 4. Standards of competency and instruction. Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

Section 5. Instructional materials and Braille equipment — Braille equipment loan program. The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a

school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program.

Section 6. Personnel training. The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.

Section 7. Section 20-7-602, MCA, is amended to read:

"20-7-602. Textbook selection and adoption — definition. (1) Textbooks ~~shall~~ *must* be selected by the district superintendent or by the school principal if there is no district superintendent. ~~Such~~ *The* selections ~~shall be~~ *are* subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

(2) *In selecting textbooks, the district shall ensure that the materials are made available to each blind and visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq."*

Section 8. Appropriation. The following money is appropriated from the general fund to the Montana school for the deaf and blind to establish a Braille equipment loan program and to provide for expansion of the outreach program to assist public school districts in conforming with the requirements of the Blind Persons' Literacy Rights and Education Act:

Fiscal year 2006	\$244,273
Fiscal year 2007	\$195,731

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions of Title 20, chapter 7, part 4, apply to [sections 1 through 6].

Section 10. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 491

[HB 457]

AN ACT REVISING LAWS GOVERNING LICENSING AND PROFESSIONAL PRACTICES OF RADIOLOGIC TECHNOLOGISTS AND RADIOLOGIST ASSISTANTS; REVISING DEFINITIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIC TECHNOLOGISTS AND SUPERVISION OF THOSE INJECTIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIST ASSISTANTS; REQUIRING ACTION BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS UPON REQUESTS FOR LICENSURE BY RADIOLOGIC TECHNOLOGISTS; REQUIRING ADOPTION OF RULES BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS; AMENDING SECTIONS 37-14-102, 37-14-301, AND 37-14-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-14-102, MCA, is amended to read:

“37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) “Board” means the board of radiologic technologists provided for in 2-15-1738.

(2) “Department” means the department of labor and industry.

~~(3) “General supervision” means the procedure is furnished under the radiologist’s overall direction and control. However, the radiologist’s presence is not required at the site during the performance of the procedure.~~

(3) “General supervision” means face-to-face communication, direction, observation, and evaluation by the radiologist at least monthly, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

~~(4)~~(4) “License” means an authorization issued by the department to perform x-ray procedures on persons.

~~(5)~~(5) “Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturistry, dental hygiene, podiatry, osteopathy, or chiropractic.

~~(6)~~(6) “Limited permit technician” means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

~~(7)~~(7) “Performance of x-ray procedures” means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient’s accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

~~(8)~~(8) “Permit” means an authorization that may be granted by the board to perform x-ray procedures on persons when the applicant’s qualifications do not meet standards required for the issuance of a license.

~~(9)~~(9) “Radiologic technologist” means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be used in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

~~(10)~~(10) “Radiologist” means a person who is licensed to practice medicine under Title 37, chapter 3, and who is board eligible or board certified by the American board of radiology, and who resides and practices in Montana.

~~(11)~~(11) "Radiologist assistant" means an advanced-level licensed radiologic technologist who works under the ~~general~~ supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment."

Section 2. Section 37-14-301, MCA, is amended to read:

"37-14-301. Limitation of license authority — exemptions. (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturistry if the person is certified by the board of dentistry as having passed an examination testing the person's proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe x-ray procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously *by the use of venous puncture and saline solution flush* upon request *and direction* of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure ~~or, the radiologist, or personnel trained in advanced cardiac life support~~ must be immediately available ~~within the x-ray department in the facility~~. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial ~~or intracatheter~~ injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under ~~another~~ *a separate* licensing act may not perform any of the activities listed in this subsection. *A radiologist assistant licensed under 37-14-313 may give injections related to the procedures authorized by the board to be provided by a radiologist assistant without regard to the restrictions on radiologic technologists provided in this section, except that when contrast media is used, a licensed physician or additional medical personnel trained in advanced cardiac life support must be immediately available in the facility.*

Section 3. Section 37-14-313, MCA, is amended to read:

"37-14-313. Radiologist assistant — scope of practice — board approval. (1) A person licensed under this chapter who has completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum or certification and who has a radiologist-directed clinical

preceptorship certificate may practice as a radiologist assistant upon approval by the board. *Board action upon a request for approval must be taken, with or without prior rulemaking, after a written request for approval is received by the board.*

(2) (a) The specific duties allowed for a radiologist assistant may be defined by the board by rule. The rules must be consistent with guidelines adopted by the American college of radiology, the American society of radiologic technologists, the American registry of radiologic technologists, *the certifying board of radiology practitioner assistants*, and subsection (2)(b). *The board shall adopt rules governing the scope of practice for radiologist assistants in order to resolve any conflicts in that subject between the guidelines of the associations named in this subsection.*

(b) The rules must specify the functions that a radiologist assistant may perform in connection with diagnostic procedures under the ~~general~~ supervision of a radiologist, including radiology procedures, invasive procedures, procedures as delegated by a radiologist, and the types of injection of contrast media and radioactive isotopes (~~radio-nuclide~~) (*radionuclide*) material allowed.

(c) *The rules may specify levels of supervision based on education and experience, but at a minimum, the level of supervision must be general supervision.*

(~~e~~)(d) A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

(3) A radiologist assistant may also be referred to as a “radiology practitioner assistant”.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 492

[HB 473]

AN ACT REVISING LAWS RELATED TO FIRE SEASONS; ALLOWING SMALL, RECREATIONAL FIRES WITHOUT A PERMIT OR PERMISSION; AND AMENDING SECTIONS 7-33-2205 AND 7-33-2206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2205, MCA, is amended to read:

“7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) The county governing body may in its discretion establish fire seasons annually, during which a person may not ignite or set ~~any~~ a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any *residential or commercial property*, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit *or permission* to ignite or set a fire from the recognized protection agency for that protection area.

(2) *A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.*

~~(2)~~(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire.”

Section 2. Section 7-33-2206, MCA, is amended to read:

“7-33-2206. Violations. ~~Any~~ A person who ignites or sets ~~any~~ a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire ~~within on~~ any residential or commercial property, forest, range, or cropland subject to the provisions of this part without first having obtained a written permit or permission from the recognized protection agency for that protection area to ignite or set ~~such~~ the fire is guilty of a misdemeanor.”

Approved April 28, 2005

CHAPTER NO. 493

[HB 476]

AN ACT INCREASING THE MARRIAGE LICENSE FEE AND THE FEE FOR FILING A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION TO FUND DOMESTIC AND SEXUAL VIOLENCE VICTIMS' SERVICES; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION PROGRAM; PROVIDING THAT THE BOARD OF CRIME CONTROL ADMINISTER GRANTS UNDER THE PROGRAM; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION ACCOUNT; AMENDING SECTIONS 25-1-201, 40-1-202, AND 40-1-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Domestic violence intervention account — administration by board of crime control. (1) There is a domestic violence intervention account in the state special revenue fund in the state treasury. There must be paid into this account the designated filing fees paid under 25-1-201(7) to the clerk of the district court. The money deposited in the account must be used for services provided under [section 2].

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the domestic violence intervention program provided for in [section 2].

Section 2. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by [section 1] to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement [sections 1 through 4].

Section 3. Program costs. The costs incurred by the Montana board of crime control in administering the domestic violence intervention program must be paid with money from the domestic violence intervention account established by [section 1]. The board may use up to 10% of the money deposited in the account for administrative costs. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

Section 4. Restriction on use of funds. Funds deposited in the domestic violence intervention account may be used only for the program authorized in [section 2] and the costs authorized under [section 3] and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

Section 5. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$43;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for

the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$43;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).~~

(6)(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)(6)~~ The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by [section 1].

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 6. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one

party has appeared before the clerk of the district court and paid the marriage license fee of ~~\$30~~ \$43, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.”

Section 7. Section 40-1-311, MCA, is amended to read:

“40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 ~~must~~ *shall*, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ *must* be firmly attached to the declaration and ~~shall~~ *must* be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is ~~\$30~~ \$43 and ~~shall~~ *must* be paid to the clerk at time of filing.”

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [sections 1 through 4].

Section 9. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 25-1-201 in both Senate Bill No. 67 and [this act] are void and 25-1-201 must read as follows:

“25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$53;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$53;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from

the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)~~(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund *to be used* for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by [section 1 of House Bill No. 476] and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 10. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 40-1-202 in both Senate Bill No. 67 and [this act] are void and 40-1-202 must read as follows:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of ~~\$30~~ \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state."

Section 11. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 40-1-311 in both Senate Bill No. 67 and [this act] are void and 40-1-311 must read as follows:

"40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 ~~must~~ *shall*, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ *must* be firmly attached to the declaration and ~~shall~~ *must* be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is ~~\$30~~ \$53 and ~~shall~~ *must* be paid to the clerk at time of filing.”

Section 12. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 494

[HB 484]

AN ACT REQUIRING THE LICENSING OF A PERSON, FIRM, OR CORPORATION THAT OPERATES A MOBILE SLAUGHTER FACILITY; DEFINING “MOBILE SLAUGHTER FACILITY”; APPLYING THE SAME INSPECTION PROVISIONS AND REGULATIONS THAT ARE REQUIRED OF ALL OFFICIAL ESTABLISHMENTS TO MOBILE SLAUGHTER FACILITIES; PROVIDING A RESTRICTED APPROPRIATION; AMENDING SECTIONS 81-9-201, 81-9-217, 81-9-220, 81-9-227, AND 81-9-228, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-9-201, MCA, is amended to read:

“81-9-201. Meat establishment license — fees and renewals. (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, *including the operation of a mobile slaughter facility as defined in 81-9-217*, or processing, storing, or wholesaling ~~the meat livestock or poultry~~ products ~~of either~~ without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.”

Section 2. Section 81-9-217, MCA, is amended to read:

“81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) “Adulterated” means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; however, the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted from the meat, any substance has been substituted wholly or in part for meat, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight or make it appear better or of greater value than it is.

(2) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(3) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law read on October 1, 1987.

(4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and alternative livestock, as defined in 87-4-406, whether alive or dead.

(5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

(7) "Misbranded" means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed on the label, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, if required by the rules, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable to the food, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;

(i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (7)(i)(ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for those uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (7)(k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly on the meat and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information that the board may require to ensure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(8) (a) *“Mobile slaughter facility” means a mobile unit that is operated by a person licensed by the board to slaughter livestock or poultry, that is capable of providing onsite slaughter services for the owner of the livestock or poultry, and at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is regulated under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.*

(b) *The term does not mean a person engaged in custom slaughtering as provided in 81-9-218(2).*

(8)(9) *“Official establishment” means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236. The term includes a mobile slaughter facility.*

~~(9)(10)~~ *“Pesticide chemical”, “food additive”, “color additive”, and “raw agricultural commodity” have the same meanings as provided in 21 U.S.C. 321.*

~~(10)(11)~~ *“Poultry” means any domesticated bird, whether alive or dead.*

~~(11)(12)~~ *“Prepared” means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.”*

Section 3. Section 81-9-220, MCA, is amended to read:

“81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as “Montana Inspected and Passed” if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled therein;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or his inspectors at any reasonable time; and

(12) prescribe additional standards, methods, and procedures as are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

(13) *provide for the licensing and inspection of mobile slaughter facilities to ensure that the requirements of this part are met with respect to all operations conducted at mobile slaughter facilities.*

Section 4. Section 81-9-227, MCA, is amended to read:

“81-9-227. Application for state meat inspection service — assignment of establishment number. (1) Any meat establishment or mobile slaughter facility operator licensed under 81-9-201 may apply to the board for state meat and poultry inspection service. The application must include:

(a) the name and address of the establishment or, *in the case of a mobile slaughter facility, the name and address of the owner of the mobile slaughter facility and a description of any mobile unit to be used as part of the mobile slaughter facility;*

(b) the type of establishment, *whether mobile or in a fixed location;*

(c) a complete description of the facilities and equipment;

(d) the day of the week and hours of the day when the establishment is in operation; and

(e) other information required by the chief.

(2) (a) The chief, upon receipt of the application, shall inspect the applicant's facilities and equipment, *including any mobile unit to be used as part of a mobile slaughter facility.* If the establishment or mobile slaughter facility is found to be clean and sanitary and if it meets the requirements of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board shall authorize the granting of state meat inspection service to the applicant. The board shall then assign an official establishment number to the approved establishment or mobile slaughter facility to be used to mark the meat of the carcasses and parts of carcasses that are offered for sale.

(b) *In the case of mobile slaughter facilities, a separate establishment number is required for each mobile unit owned and operated by the applicant. The board shall assign an official establishment number to each approved mobile unit, which must be used to mark the meat of carcasses and parts of carcasses that are offered for sale from that mobile unit.*

Section 5. Section 81-9-228, MCA, is amended to read:

“81-9-228. Inspection stamps. (1) The board shall provide meat inspection stamps to all official establishments, *including mobile slaughter facilities*, which must contain the words “Montana Inspected and Passeded”. The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they offer for sale if they are in compliance with the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief.”

Section 6. Restricted appropriation. There is appropriated \$46,289 in fiscal year 2006 and \$42,605 in fiscal year 2007 from the general fund to the department of livestock in order to implement the provisions of the mobile slaughter facility licensing program created in [this act]. This appropriation is a restricted appropriation, as that term is described in [section 4] of House Bill No. 2.

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 495

[HB 502]

AN ACT REMOVING THE REQUIREMENT THAT FINGERPRINTS BE SUBMITTED AND A BACKGROUND CHECK BE CONDUCTED WITH RESPECT TO A MANAGER OF A FACILITY FOR WHICH AN APPLICATION FOR A BEER AND WINE LICENSE FOR OFF-PREMISES CONSUMPTION IS BEING SOUGHT; CLARIFYING THE REQUIREMENT FOR ADDITIONAL FINGERPRINTING AND BACKGROUND CHECKS WITH RESPECT TO A LICENSE FOR OFF-PREMISES CONSUMPTION; AMENDING SECTION 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-414, MCA, is amended to read:

“16-4-414. Fingerprints required of applicants — exceptions. (1) ~~An~~ Except as provided in subsections (2) and (3), an applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the

investigation must be used by the department in determining the applicant's eligibility for a license.

(2) (a) *When the applicant is seeking a license for off-premises consumption, the following persons are subject to the fingerprint and background check described in subsection (1):*

(i) *the applicant;*

(ii) *a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee; or*

(iii) *if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director responsible for operating the licensed establishment.*

(b) *Additional fingerprint and background checks may be required at renewal only for new persons described in subsection (2)(a).*

(c) *A change in the form of a licensee's business entity that does not result in any person having a new ownership interest in the business is not grounds for the department to require a fingerprint or background check.*

(3) *When the applicant is seeking a license for off-premises consumption, a person employed by the applicant as a manager is not subject to the fingerprint and background check described in subsection (1)."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 496

[HB 512]

AN ACT APPROPRIATING UP TO \$1.1 MILLION OF FEDERAL FUNDS TO THE DEPARTMENT OF TRANSPORTATION FOR LOCAL RAIL FREIGHT ASSISTANCE PROGRAMS; AMENDING SECTIONS 60-11-111 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. Federal funds received for local rail freight assistance programs under former 49 U.S.C. 1654 in an amount up to \$1.1 million are appropriated to the department of transportation for the biennium beginning July 1, 2005, to be used for the purposes provided in 60-11-120(2)(a) or in former 49 U.S.C. 1654.

Section 2. Section 60-11-111, MCA, is amended to read:

"60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements in the lines.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine

the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(c);

(d) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(e) shall establish procedures, including the use of federal funds received for rail freight assistance programs under *former* 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(c)(i) must be administered by the department of natural resources and conservation, as prescribed in Title 77, until the land is needed for transportation purposes.”

Section 3. Section 60-11-120, MCA, is amended to read:

“60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility. (1) Money appropriated by the legislature may be used by the department ~~of transportation~~, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for the preservation and continued operation of railroad branch lines identified in 60-11-111 and for the development and improvement of intermodal transportation facilities *except as prohibited by federal law*. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund *except as required by federal law*.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section if:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility for which a loan or grant is sought is integrally related to the railroad transportation system of the state.”

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 497

[HB 530]

AN ACT DESIGNATING MILES CITY AS A CULTURAL HERITAGE AREA; AMENDING SECTION 60-2-220, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-220, MCA, is amended to read:

“60-2-220. ~~Butte-Anaconda cultural~~ Cultural heritage area — signs — location and design — funding. (1) ~~There is established a~~ A cultural heritage area *is established*:

(a) encompassing Silver Bow County and Deer Lodge County;

(b) *encompassing Miles City.*

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in ~~Silver Bow County and Deer Lodge County~~ signs identifying those counties *the appropriate areas* signs identifying those areas as a cultural heritage area.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge *and the city of Miles City* shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend the money received for those purposes.

(5) As used in this section, “department” means the department of transportation provided for in 2-15-2501.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 498

[HB 537]

AN ACT PROHIBITING THE ADVERSE USE OF INQUIRIES REGARDING INSURANCE COVERAGE; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-1105, MCA, is amended to read:

“33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of the intention not to renew. The insurer shall also mail or deliver a copy to the insured’s insurance producer.

(b) Notification or nonrenewal to the insured’s insurance producer via electronic transfer of data or by *an* electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured’s renewal, that a single loss is among the insurer’s criteria for nonrenewal.

(5) (a) *For the purposes of this subsection (5), the following definitions apply:*

(i) *“Claim” means a contact with an insurer by an insured or third party for the purpose of seeking payment. An inquiry into coverage on a property and casualty insurance policy is not claim activity unless:*

(A) *a payment is made;*

(B) *a reserve is established or loss adjustment expenses are incurred; or*

(C) *a written, formal denial of the claim is issued to the insured or claimant.*

(ii) *“Inquiry” means a request for information regarding the terms, conditions, or coverages offered under a property and casualty insurance policy that does not result in a claim.*

(b) *An insurer may not use a direct or indirect inquiry as the basis for declining or not renewing insurance coverage or a binder of insurance coverage or for increasing the insurance premium.*

(c) *An inquiry may not be considered a claim under 33-18-201.*

(d) *An insurer may not submit to any insurance support organization or consumer reporting agency an insured’s name if the insured made an inquiry about terms or coverage of an insurance policy.”*

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 499

[HB 540]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR COLLEGES OF TECHNOLOGY AND OTHER CAPITAL PROJECTS; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 6], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, equipping, furnishing, or major repair projects authorized in [sections 1 through 6].

(2) "CPF" means the capital projects fund.

Section 2. Appropriation of bond proceeds. (1) The following money is appropriated from the CPF from the proceeds for the bonds authorized by [section 3] to the department of administration for the capital projects described in this section, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners:

Agency/Project

MONTANA HISTORICAL SOCIETY

Montana Historical Society Building	\$7,500,000
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MONTANA UNIVERSITIES AND COLLEGES

Montana State University

Great Falls College of Technology	11,000,000
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Billings College of Technology	9,000,000
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University of Montana

Helena College of Technology	7,500,000
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Montana Tech of the University of Montana

Petroleum Building	9,000,000
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Gaines Hall Renovation, Phase I	3,500,000
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MSUAES Projects	500,000
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(2) The following money is appropriated from the CPF from the proceeds for the bonds authorized by [section 3] to the department of natural resources and conservation for the capital projects described in this section, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners:

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

St. Mary Water Project — State Support	10,000,000
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State Cost Share — Fort Belknap Water Compact	9,500,000
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Section 3. Authorization of bonds — condition. (1) Subject to subsection (2), the board of examiners is authorized to issue and sell general

obligation bonds in an amount not exceeding \$68 million for the capital projects described in [section 2] over and above the amount of general obligation bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

(2) The sale of bonds and the appropriation in [section 2] of bond proceeds for the St. Mary water project are contingent upon the receipt of the federal cost-share for the project.

Section 4. Planning and design. The department of administration and department of natural resources and conservation may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The departments may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 5. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 6. Legislative consent. The appropriations authorized in [section 2] constitute legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 7. Requirement for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 500

[HB 541]

AN ACT REVISING THE REGISTRATION OF CERTAIN MOTOR HOMES; ALLOWING MOTOR HOMES 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; ESTABLISHING THE PERMANENT REGISTRATION FEE; PROVIDING THAT CERTAIN FEES FOR PERMANENT REGISTRATION ARE FIVE TIMES THE EXISTING FEES; AMENDING SECTIONS 15-1-122, 19-6-709, 61-3-303, 61-3-321, 61-3-332, 61-3-479, AND 61-3-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) ~~\$75,000 in fiscal year 2003;~~

(b) ~~\$0 in fiscal years 2004 and 2005;~~

(e) \$3,050,205 in fiscal year 2006; and

~~(d)(b)~~ in each succeeding fiscal year, the amount in subsection ~~(2)(e)~~ (2)(a), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered *motor home under 61-3-522(3) or light vehicle under 61-3-562*;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for

enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-522(3), 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;

(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in

subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to *61-3-522(3) and 61-3-562*. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 2. Section 19-6-709, MCA, is amended to read:

“19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), *61-3-522(3)(b)*, 61-3-527(4), and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 3. Section 61-3-303, MCA, is amended to read:

“61-3-303. Registration — process — fees. (1) A Montana resident who owns a motor vehicle operated or driven upon the public highways of this state shall register the motor vehicle in the office of the county treasurer in the county where the owner permanently resides or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the county where the vehicle is permanently assigned.

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

(5) A person who seeks to register a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(d) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the vehicle to the owner unless the owner makes the payments required by subsection (5). Except as provided in 61-3-522(3), 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) except as provided in subsection (9), the immediately preceding year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(7) The department may make full and complete investigation of the registration status of the vehicle. A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection (9)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection (9)(a) is transferred, the new owner is required to register the vehicle as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.”

Section 4. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) 2,850 pounds and over, \$10; and

(ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, ~~\$9 in calendar year 2004 and, in each subsequent year, \$19.25.~~ This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, ~~\$18.75 in calendar year 2004 and, in each subsequent year, \$22;~~

(f) logging trucks less than 1 ton, \$23.75;

(g) motor homes, \$22.25;

(h) motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$9.75 in calendar year 2004 and, in each subsequent year, \$11.25.~~ This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, \$11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, ~~\$3.50 in calendar year 2004 and, in each subsequent year, \$9.75.~~ If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$5 in calendar year 2004 and, in each subsequent year,~~ \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in *61-3-522(3)* and 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in *61-3-522(3)*, 61-3-562, and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(10) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(11) (a) Unless a person exercises the option in subsection (11)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (11)(a). If a written election is made, the fee may not be collected."

Section 5. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-522(3), 61-3-527 or 61-3-315, and 61-3-562 and vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) *of this section or a motor home* that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) For passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55;

Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

(11) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. If the vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 6. Section 61-3-479, MCA, is amended to read:

"61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the department of revenue and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any vehicle, except a trailer of any size, a motorcycle, or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481, *61-3-522(3)*, and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481, *61-3-522(3)*, and 61-3-562, the department is subject to the same rules and laws that govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on number plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(11)."

Section 7. Section 61-3-522, MCA, is amended to read:

"61-3-522. Schedule of fees for motor homes — permanent registration — transfer of ownership. (1) The owner of a motor home shall pay a *registration* fee based on the age of the motor home according to the following schedule:

less than 2 years old	\$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older.....	65

(2) (a) Except as provided in subsection (2)(b), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(3) (a) *The owner of a motor home 11 years old or older subject to the registration fee under subsection (1) may permanently register the motor home upon payment of a \$195 registration fee, the applicable registration and license fees under 61-3-321 and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:*

- (i) *weed control fees under 15-1-122(3)(b);*
- (ii) *the county motor vehicle computer fees under former 61-3-511;*
- (iii) *if applicable and subject to subsection (3)(c), special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and*
- (iv) *senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).*

(b) *A person who permanently registers a motor home as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (3)(b) from each motor home registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.*

(c) *The following series of license plates may not be used for purposes of permanent registration of a motor home:*

- (i) *Montana national guard license plates issued under 61-3-458(2)(b);*
- (ii) *reserve armed forces license plates issued under 61-3-458(2)(c);*

(iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);

(iv) amateur radio operator license plates issued under 61-3-422;

(v) collegiate license plates issued under 61-3-465; and

(vi) generic specialty license plates issued under 61-3-479.

(4) The owner of a motor home that is permanently registered under this section is not subject to additional registration fees under subsection (1) or to other motor vehicle registration fees described in this section for as long as the owner owns the motor home.

(5) The county treasurer shall:

(a) distribute the \$195 registration fee collected under this section as provided in 61-3-509;

(b) remit to the department of revenue the amounts collected under this section for the purposes of 15-1-122(3).

(6) (a) The permanent registration of a motor home allowed by this section may not be transferred to a new owner. If the motor home is transferred to a new owner, the department shall cancel the motor home's permanent registration.

(b) Upon transfer of a motor home registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and file an application for registration under 61-3-303."

Section 8. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved then [sections 1 through 4, 6, and 7 of this act] are void and the following must be inserted into 61-3-321(7), the fee schedule for motor homes, as amended by Senate Bill No. 285:

"(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of \$237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner."

Section 9. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 501

[HB 550]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR HOLDING A MONTANA YOUTH LEADERSHIP FORUM FOR STUDENTS WITH DISABILITIES, INCLUDING INDIAN STUDENTS ON MONTANA RESERVATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated \$50,000 from the state general fund to the department of public health and human services for each of the fiscal years 2006 and 2007. The department shall use the appropriation for a grant or to fund a contract to hold a Montana youth leadership forum for students with disabilities, including Indian students on Montana reservations.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Approved April 28, 2005

CHAPTER NO. 502

[HB 552]

AN ACT PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM APPLYING FINANCIAL CRITERIA BELOW \$15,000 FOR RESOURCES OTHER THAN INCOME IN DETERMINING THE ELIGIBILITY OF CHILDREN UNDER THE POVERTY LEVEL-RELATED CHILDREN'S MEDICAID COVERAGE GROUPS; PROVIDING AN APPROPRIATION; AMENDING SECTION 53-6-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-113, MCA, is amended to read:

“53-6-113. Department to adopt rules. (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

- (b) the actual cost of services;
- (c) the quality of services;
- (d) the professional knowledge and skills necessary for the delivery of services; and
- (e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq. *The department may not apply financial criteria below \$15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).*

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

- (a) participation in managed care;
- (b) selection and qualifications for providers of managed care; and
- (c) standards for the provision of managed care.

(9) *The Subject to subsection (6), the department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature."*

Section 2. Appropriation. There is appropriated \$1,876,316 from the health and medicaid initiatives state special revenue account in 53-6-1201 to the department of public health and human services for fiscal year 2007 for the purposes of providing medicaid services to children under 19 years of age for whom the department may not apply financial criteria, as provided in 53-6-113(6).

Section 3. Effective date. [This act] is effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 503

[HB 574]

AN ACT AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO ISSUE BONDS UPON APPROVAL OF A BOND PROPOSITION BY A MAJORITY VOTE OF THE ELECTORATE AT CERTAIN ELECTIONS; AMENDING SECTIONS 20-6-206, 20-6-318, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-206, MCA, is amended to read:

“20-6-206. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, ~~shall~~ *must* comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots ~~shall~~ *must* read, after stating the consolidation proposition, “FOR consolidation with assumption of bonded indebtedness” and “AGAINST consolidation with assumption of bonded indebtedness”.

(2) In an annexation election the ballots ~~shall~~ *must* read, after stating the annexation proposition, “FOR annexation with assumption of bonded indebtedness” and “AGAINST annexation with assumption of bonded indebtedness”.

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of 20-20-415, they shall ~~decide, according to the following procedure, if the proposition has been approved:~~

~~(a) determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by 20-9-428; and~~

~~(b) when the proposition is approved under subsection (4)(a), determine the number of votes “FOR” and “AGAINST” the proposition.~~

(5) The proposition ~~shall be~~ *is* approved in the district if a majority of those voting approve the proposition. ~~If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.”~~

Section 2. Section 20-6-318, MCA, is amended to read:

“20-6-318. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election involving the joint assumption of bonded indebtedness by the high school districts to be annexed as prescribed in 20-6-317 must comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each high school district conducting an election canvass the vote under the provisions of 20-20-415, they shall ~~decide according to the following procedure if the proposition has been approved:~~

~~(a) determine if a sufficient number of the qualified electors of the district voted to validate the election and voted to approve the election proposition in the manner required for bond elections by 20-9-428; and~~

~~(b) if the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.~~

~~(5) If the proposition is disapproved under the provisions of subsection (4)(a) receives a majority of the votes cast on the issue, the proposition is disapproved approved in the district."~~

Section 3. Section 20-9-428, MCA, is amended to read:

"20-9-428. Determination of approval or rejection of proposition at bond election. (1) ~~When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:~~

~~(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;~~

~~(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;~~

~~(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and~~

~~(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or~~

~~(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or~~

~~(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected~~ *When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:*

(a) If the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) *determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;*

(ii) *determine the total number of qualified electors voting at the school bond election from the tally sheets for the election;*

(iii) *calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i); and*

(iv) *when the calculated percentage in subsection (1)(a)(iii) is 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise, it is rejected; or*

(v) *when the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise, it is rejected; or*

(vi) *when the calculated percentage in subsection (1)(a)(iii) is 30% or less, the school bond proposition is rejected.*

(b) *If the school district bond election is held at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.*

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of ~~such~~ the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for ~~such~~ the school district bond election."

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to school bond elections held on or after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 504

[HB 577]

AN ACT APPROPRIATING MONEY TO THE OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO BE USED FOR COSTS FOR SEXUAL ASSAULT FORENSIC EXAMS FOR SEXUAL ASSAULT VICTIMS; AMENDING SECTIONS 2-15-2014 AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated \$61,000 from the general fund to the department of justice for the office of restorative justice to be used to cover the costs of providing sexual assault forensic exams for sexual assault victims as provided in 46-15-411. This is a biennial appropriation.

Section 2. Section 2-15-2014, MCA, is amended to read:

"2-15-2014. Restorative justice fund created — source of funding — use of fund. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the restorative justice fund.

- (2) There must be deposited in the account:
 - (a) money received from legislative allocations;
 - (b) a transfer of money from a state or local agency for the purposes of 2-15-2013; ~~and~~
 - (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of 2-15-2013; *and*
 - (d) *money received by the department of justice for the purpose of administering 46-15-411(2).*
- (3) ~~The~~ *Except as provided in subsection (2)(d), the fund may be used only to provide grants for restorative justice programs as provided in 2-15-2013 to community-based, including faith-based, organizations."*

Section 3. Section 46-15-411, MCA, is amended to read:

"46-15-411. Payment for medical evidence — *alleged sexual offenses.*

(1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the medical examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) *The office of restorative justice in the department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the medical examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).*

(b) *In administering the provisions of subsection (2)(a), the office of restorative justice shall:*

(i) *identify priorities for funding services, activities, and criteria for the receipt of program funds;*

(ii) *monitor the expenditure of funds by organizations receiving funds under this section;*

(iii) *evaluate the effectiveness of services and activities under this section;*
and

(iv) *adopt rules necessary to implement this subsection (2).*

~~(2)(3)~~ This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 505

[HB 606]

AN ACT REQUIRING CERTAIN SMALL MINERS WHO INTEND TO USE AN IMPOUNDMENT TO STORE WASTE FROM ORE PROCESSING TO OBTAIN APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF AN IMPOUNDMENT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO POST A PERFORMANCE BOND; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-305, MCA, is amended to read:

“82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through ~~(10)~~ (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is an individual, that:
 - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
 - (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:
 - (i) none of the associates or partners holds a small-miner exemption; and
 - (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or
- (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:
 - (i) holds a small-miner exemption;
 - (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
 - (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of

the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii).

(8) (a) *Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).*

(b) *The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an*

impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after [the effective date of this act] shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of [the effective date of this act]. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(8)(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

~~(9)~~(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

~~(10)~~(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 506

[HB 615]

AN ACT CREATING AN ENVIRONMENTAL VIOLATIONS INVESTIGATION AND PROSECUTION AUTHORITY IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Environmental violations investigation and prosecution — authority. The department of justice, at the request of the department of environmental quality, shall investigate and prosecute violations of the provisions of Title 75 and may also assist county attorneys in investigating and prosecuting violations of the provisions of Title 75 without charge to the county.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 507

[HB 645]

AN ACT REVISING LAWS GOVERNING SPECIAL LICENSE PLATES FOR PERMANENTLY DISABLED PERSONS; ALLOWING A PERSON WHO HAS A PERMANENT DISABILITY THAT MEETS CERTAIN CRITERIA TO

CONTINUE TO DISPLAY A SPECIAL LICENSE PLATE BEARING THE SYMBOL OF A WHEELCHAIR UPON VEHICLE REREGISTRATION WITHOUT SUBMITTING AN ADDITIONAL APPLICATION; AMENDING SECTIONS 49-4-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-301, MCA, is amended to read:

“49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person’s mobility and who, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person’s functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person’s mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(11). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant’s physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a new certification from the disabled person’s physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) *A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, upon written application on a form prescribed by the department of justice, be issued a special license plate under 61-3-332(11) and is not required to reapply for the special license plate when the vehicle is reregistered.*

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a

disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 2. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562 and vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) For passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

(11) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(c) *A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (11), is not required to reapply upon reregistration of the vehicle or upon transfer of the special plate as provided in subsection (8).*

(12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 3. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then 49-4-301 must be amended as follows:

"49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and ~~who, as determined by~~ *for whom* a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, *submits a certification to the department, by electronic or other means*

prescribed by the department, that the person meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(11)~~ 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a ~~new~~ *later paper or electronic* certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) *A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a special license plate under 61-3-332(9) and is not required to reapply for the special license plate when the vehicle is reregistered.*

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 4. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then the code commissioner shall change all of the references to vehicle in subsection (11)(c) of 61-3-332 in [this act] to references to motor vehicles.

Section 5. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 508

[HB 652]

AN ACT ALLOWING A SCHOOL DISTRICT TO EXTEND A BUS ROUTE ACROSS ANOTHER SCHOOL DISTRICT IN ORDER TO PROVIDE TRANSPORTATION TO STUDENTS WITHIN ITS OWN DISTRICT; AMENDING SECTION 20-10-126, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-126, MCA, is amended to read:

“20-10-126. Establishment of transportation service areas. (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) (a) *Except as provided in subsection (2)(b), a district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils.*

(b) *A district may extend a bus route across another transportation service area if the district determines that it is necessary in order to provide transportation to pupils in the district's own transportation service area. Under this subsection (2)(b), a district may not transport pupils from outside its transportation service area.*

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.

(6) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent

transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(7) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 509

[HB 678]

AN ACT REVISING LENGTH LIMITS ON TRIPLE-TRAILER TRUCK CONFIGURATIONS; AND AMENDING SECTION 61-10-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

“61-10-124. (Temporary) Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Except as provided in subsection (2)(g), a Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) ~~the combined trailer length may not exceed 95 feet~~ a combination of vehicles powered by a cab-over or tilt-cab truck-tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(e)(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e)(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(e)(f) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(e)(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(e)(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment. (Void on occurrence of contingency—sec. 2, Ch. 285, L. 2003.)

61-10-124. (Effective on occurrence of contingency) Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as

provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

~~(b) the combined trailer length may not exceed 95 feet~~ *a combination of vehicles powered by a cab-over or tilt-cab truck-tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;*

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

~~(e)(d)~~ an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

~~(d)(e)~~ gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

~~(e)(f)~~ the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

~~(f)(g)~~ travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

~~(g)(h)~~ the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment.”

Approved April 28, 2005

CHAPTER NO. 510

[HB 681]

AN ACT REVISING THE LAWS ON SCHOOL DISTRICT CONSOLIDATION AND ANNEXATION; ESTABLISHING A SINGLE PROCEDURE FOR THE ANNEXATION AND CONSOLIDATION OF SCHOOL DISTRICTS; PROVIDING FOR AN INTERIM BOARD OF TRUSTEES FOLLOWING PASSAGE OF A CONSOLIDATION ELECTION; CLARIFYING THAT DISTRICTS MAY CONSOLIDATE OR ANNEX ACROSS COUNTY LINES; REQUIRING A RESOLUTION OR PETITION FOR CONSOLIDATION OR ANNEXATION TO STATE WHETHER OR NOT THE CONSOLIDATION OR ANNEXATION WILL OCCUR WITH ASSUMPTION OF BONDED INDEBTEDNESS; REQUIRING A CONSOLIDATION ELECTION TO BE HELD NO LATER THAN DECEMBER 31 PRECEDING THE SCHOOL FISCAL YEAR IN WHICH THE CONSOLIDATION IS TO BECOME EFFECTIVE; CLARIFYING THAT A CONSOLIDATION OR ANNEXATION IS EFFECTIVE JULY 1 FOLLOWING AN ELECTION; CLARIFYING THAT CONSOLIDATION OR ANNEXATION MUST OCCUR WITH CONTIGUOUS DISTRICTS; CLARIFYING THE PROCEDURE FOR DETERMINING APPROVAL OF A CONSOLIDATION OR ANNEXATION WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ALLOWING AN ABANDONED DISTRICT TO ATTACH TO A CONTIGUOUS DISTRICT IN AN ADJACENT COUNTY; ALLOWING FOR THE CONSOLIDATION AND ANNEXATION OF K-12 DISTRICTS; ALLOWING DISTRICTS TO CONSOLIDATE ACROSS COUNTY LINES WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ELIMINATING THE SPECIAL PROCEDURES FOR THE CONSOLIDATION, ABANDONMENT, AND DISSOLUTION OF JOINT DISTRICTS; ELIMINATING THE SEPARATE PROCEDURES FOR THE ANNEXATION AND CONSOLIDATION OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 20-3-205, 20-3-302, 20-3-312, 20-6-209, 20-6-307, 20-6-704, AND 20-9-311, MCA; REPEALING SECTIONS 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, AND 20-6-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee.

Be it enacted by the Legislature of the State of Montana:

Section 1. Conditions for district annexation. (1) An elementary district may be annexed to a contiguous elementary district under the provisions of [section 2] when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, to a first-class district, or to a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or to a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) A high school district may be annexed to a contiguous high school district or a K-12 school district may be annexed to a contiguous K-12 school district under the provisions of [section 2] when:

(a) a third-class district is annexed to a first-class district or to a second-class district; or

(b) a second-class district is annexed to a first-class district.

Section 2. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of [section 1] is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located shall first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must

state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedures, if the proposition has been approved:

(i) determine if a sufficient number of the qualified electors of the district have voted to validate the election in the same manner required for bond elections by 20-9-428; and

(ii) when the proposition is validated under the provisions of subsection (6)(b)(i), determine the number of votes "FOR" and "AGAINST" the proposition.

(c) If the proposition is validated and approved under the provisions of subsection (6)(b), the proposition is approved in the district.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without the assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county

involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition.

Section 3. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedure, if the proposition has been approved:

(i) determine if a sufficient number of the qualified electors of the district have voted to validate the election in the same manner required for bond elections by 20-9-428; and

(ii) when the proposition is validated under the provisions of subsection (5)(b)(i), determine the number of votes "FOR" and "AGAINST" the proposition.

(c) If the proposition is validated and approved under subsection (5)(b), the proposition is approved in the district.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise, it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in [section 4]. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition.

Section 4. Interim governance of consolidated district. (1) Upon passage of a consolidation proposition under the provisions of [section 3], an interim board of trustees made up of all of the members of the boards of trustees of the districts that consolidated shall serve as the trustees for the consolidated district from the date of the consolidation order until the newly elected board of the consolidated district is organized under 20-3-321. The interim board of trustees shall elect a presiding officer from among its members.

(2) The trustees of each district incorporated in the consolidation order shall continue to perform those duties related to the operation of their individual districts until the effective date of the consolidation. The interim board of

trustees shall perform those duties related to the formation of and transition to the consolidated district, including but not limited to:

(a) calling an election of the new board of trustees for the consolidated district to be held on the regular election day preceding the effective date of the consolidation; and

(b) if necessary, calling an election under 20-9-353 for the ensuing budget year of the consolidated district.

(3) At the next regular school election following the consolidation election, trustees for the consolidated district must be elected in accordance with the election provisions of Title 13 and Title 20. The term of office is 3 years, except that the initial terms of the newly elected trustees must be selected by lot in order to comply with the provisions of 20-3-302.

(4) The interim board of trustees must be dissolved upon the organization of the newly elected trustees pursuant to 20-3-321.

Section 5. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

~~(1)~~(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

~~(2)~~(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

~~(3)~~(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

~~(4)~~(d) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

~~(5)~~(e) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

~~(6)~~(f) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

~~(7)~~(g) keep a transcript of the district boundaries of the county;

~~(8)~~(h) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

~~(9)~~(i) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

~~(10)~~(j) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

~~(11)~~(k) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

~~(12)~~(l) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

~~(13)~~(m) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14)(n) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

~~(15)~~(o) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16)(p) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

~~(17)~~(q) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

~~(18)~~(r) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19)(s) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

~~(20)~~(t) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21)(u) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22)(v) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23)(w) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24)(x) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25)(y) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

~~(a)~~(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

~~(b)~~(ii) the total receipts that were realized in each fund maintained by the district;

~~(c)~~(iii) the total expenditures that were made from each fund maintained by the district; and

~~(d)~~(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

~~(26)~~(z) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) *When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.*

(b) *When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."*

Section 6. Section 20-3-302, MCA, is amended to read:

"20-3-302. Legislative intent to elect less than majority of trustees.

(1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In county high school districts, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the consolidation, *under the provisions of [section 3],* of two or more elementary districts to form an elementary district, ~~under the provisions of 20-6-203 or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315, or of two or more K-12 districts to form a K-12 district;~~

(b) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(c) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(d) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(e) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same

time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.”

Section 7. Section 20-3-312, MCA, is amended to read:

“20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, ~~joint district dissolution~~, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts, shall continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of elementary district consolidation, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of ~~20-6-203~~ [section 3].”

Section 8. Section 20-6-209, MCA, is amended to read:

“20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district *or districts* of the county *or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county* when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.”

Section 9. Section 20-6-307, MCA, is amended to read:

“20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county *or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county.*”

Section 10. Section 20-6-704, MCA, is amended to read:

“20-6-704. Dissolution of K-12 school district. (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district’s elementary or high school program with ~~an adjacent~~ *a contiguous* school district or districts in an ensuing school fiscal year under the provisions of ~~20-6-203 through 20-6-208 or 20-6-315 through 20-6-319~~ *[section 2 or 3]*.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed *to* or consolidated with ~~an adjacent~~ *a contiguous* district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation *to* or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not ~~consolidated or~~ annexed *to or consolidated with* another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the elementary district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction."

Section 11. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the

district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of ~~20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4 [section 2 or 3]~~, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent."

Section 12. Repealer. Sections 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, and 20-6-321, MCA, are repealed.

Section 13. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 6, part 4, and the provisions of Title 20, chapter 6, part 4, apply to [sections 1 through 4].

Section 14. Coordination instruction. If House Bill No. 574 and [this act] are both passed and approved, then [sections 2 and 3] of [this act] must read as follows:

“NEW SECTION. Section 2. District annexation. (1) As used in this section, the following definitions apply:

(a) “Annexing district” means the district to which another district is being attached through an annexation procedure.

(b) “District to be annexed” means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of [section 1] is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located shall first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, “FOR annexation with assumption of bonded indebtedness” and “AGAINST annexation with assumption of bonded indebtedness”.

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition."

"NEW SECTION. Section 3. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of

bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in [section 4]. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition."

Section 15. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 511

[HB 687]

AN ACT GENERALLY REVISING THE TOBACCO LAWS; REQUIRING ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE TO COMPLY WITH ALL TOBACCO PRODUCT LAWS; APPOINTING THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT OF CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; REVISING LAWS FOR CIGARETTE LICENSING TO INCLUDE LICENSING FOR SELLERS OF ALL TOBACCO PRODUCTS; REQUIRING COMMON CARRIERS TO REPORT SHIPMENTS OF TOBACCO PRODUCTS TO THE DEPARTMENT OF REVENUE; ALLOWING DEPARTMENT OF JUSTICE AGENTS TO ENFORCE BOTH TOBACCO TAX LAWS AND LAWS RELATED TO THE MASTER SETTLEMENT AGREEMENT; REQUIRING SUBJOBBER, TOBACCO PRODUCT VENDORS, AND RETAILERS TO MAINTAIN RECORDS RELATED TO TOBACCO PRODUCTS; ALLOWING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE TO EXAMINE RECORDS RELATED TO TOBACCO PRODUCTS; PROVIDING FOR INDIVIDUAL LIABILITY FOR OFFICERS AND DIRECTORS OF ENTITIES THAT SELL TOBACCO PRODUCTS IN VIOLATION OF TOBACCO LAWS; REQUIRING TOBACCO PRODUCT SELLERS TO REPORT SALES TO MONTANA TAX AUTHORITIES; REQUIRING LABELING OF TOBACCO PRODUCTS SHIPPED INTO MONTANA; REVISING THE PENALTY FOR USING, CONSUMING, OR SELLING A PACK OF CIGARETTES THAT DOES NOT BEAR THE REQUIRED TAX INSIGNIA; ALLOWING SEIZURE OF CONTRABAND TOBACCO PRODUCTS BY DEPARTMENT OF JUSTICE AGENTS; REVISING THE FORFEITURE AND DESTRUCTION PROCEDURES FOR CONTRABAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT RELATE TO CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; GENERALLY REVISING THE PENALTIES FOR VIOLATIONS OF THE TOBACCO PRODUCT TAX LAWS; REQUIRING RETAILERS WHO PURCHASE TOBACCO PRODUCTS ON WHICH THE MONTANA TAXES HAVE NOT BEEN PAID TO PAY THE TAXES; PROVIDING FOR A RIGHT TO HEARING ON ACTIONS TAKEN TO ENFORCE THE TOBACCO PRODUCTS TAX LAWS; PROVIDING FOR

JURISDICTION FOR TAX VIOLATIONS; AMENDING SECTIONS 16-10-306, 16-11-102, 16-11-103, 16-11-104, 16-11-111, 16-11-114, 16-11-118, 16-11-119, 16-11-120, 16-11-122, 16-11-131, 16-11-132, 16-11-133, 16-11-141, 16-11-142, 16-11-143, 16-11-144, 16-11-145, 16-11-146, 16-11-147, 16-11-148, 16-11-149, 16-11-150, 16-11-155, 16-11-158, 16-11-507, AND 53-6-1201, MCA; REPEALING SECTIONS 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Regular and systematic solicitation of business — compliance with chapter. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner shall comply with all the requirements of this chapter and any rules adopted pursuant to this chapter.

Section 2. Secretary of state as process agent for unlicensed person doing business in state. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner, without a license as required by this chapter, shall, by so doing, be considered to appoint the secretary of state as its agent upon whom all lawful process may be served. The secretary of state may be served with process issued within this state in any action or proceeding against the unlicensed person arising out of any contract or transaction. The regular and systematic solicitation of consumers in this state is considered to signify the person's assent to personal jurisdiction in the courts of this state and agreement that service of process on the secretary of state will have the same legal effect and validity as personal service of process upon the person in this state.

Section 3. Service of process. (1) Service of process pursuant to [section 2] must be made by delivering to and leaving with the secretary of state's office two copies of the summons and complaint and any fees required by law. The secretary of state shall, in a timely manner, mail by registered or certified mail one of the copies to the defendant at its last-known business address. The secretary of state shall keep the other copy as a record of the process served upon the secretary of state. The service of process is sufficient if a notice of service and a copy of the process are sent within 10 days after service by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of business and if the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this section are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(2) Service of process in any action, suit, or proceeding, in addition to being made in the manner provided in subsection (1), must be considered valid if:

(a) served upon any person within this state on behalf of the person soliciting business who is:

- (i) soliciting orders for sale of tobacco products;
- (ii) making any contract for sale of tobacco products or delivering any tobacco products; or
- (iii) collecting or receiving any money for tobacco products;

(b) a copy of the process is sent within 10 days after service, by certified mail, by the plaintiff's attorney to the defendant at the last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this subsection (2) are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(3) A plaintiff or complainant is not entitled to a judgment by default under this section until 30 days after the date of the filing of the affidavit of compliance.

(4) This section does not limit or abridge the right to serve any process, notice, or demand upon any tobacco product seller in any other manner now or later permitted by law.

Section 4. Joint and several liability. (1) An individual is individually liable, jointly and severally, with and to the same extent as the business, upon a determination that the individual possessed the responsibility on behalf of the business to comply or direct compliance with state law regarding sales of tobacco products if the individual is:

(a) a controlling person who directly or indirectly controls a business liable for a violation of the tax and directory requirements of this chapter; or

(b) a partner, officer, director, or person occupying a similar status or performing similar functions.

(2) For the purpose of determining liability for violations of the tax and directory requirements of this chapter, a member-managed limited liability company must be treated as a partnership with liability extending to each member who was a member at the time the violation occurred.

(3) For the purpose of determining personal liability for the failure to comply with the tax requirements of this chapter by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable along with the limited liability company for all penalties owed.

(4) For determining personal liability for the failure to comply with the tax requirements of this chapter, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for any penalties and interest due.

Section 5. Tobacco product sales reporting requirements. (1) Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state or contracted

with another party for delivery service in connection with a sale of tobacco products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department. The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar month:

- (a) the name and address of the consumer to whom the sale was made;
- (b) the brand or brands of the tobacco products that were sold; and
- (c) the quantity of tobacco products that were sold.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the requirements of this section.

(4) The department may seek an injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this section.

Section 6. Forfeiture of contraband and property used in transporting contraband. (1) Upon the seizure of any contraband and within 10 working days after seizure of any equipment or property, the officer making the seizure shall:

(a) deliver an inventory of the property or contraband seized to the person from whom the seizure was made or to any other person having a right or interest in the seized property or contraband, if known; and

(b) file a copy of the inventory with the department if the tobacco product is contraband under part 1 of this chapter or with the department of justice if the tobacco product is contraband under parts 4 or 5 of this chapter.

(2) If a person other than the person from whom the property or contraband was seized, as described in subsection (1), does not notify the department that issued the notice of a written claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (1), the seized property or contraband is considered forfeited.

(3) If a person notifies the appropriate department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (1), the person is entitled to a hearing on the claim or right. The hearing must be held before the issuing department's director or the director's designee, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property or contraband is more than \$500, a person seeking the return of the property or contraband may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property or contraband was seized.

(4) All property and contraband forfeited must be disposed of as provided in 16-11-158.

Section 7. Section 16-10-306, MCA, is amended to read:

“16-10-306. Cigarette and tobacco product labels — federal requirements — penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section, ~~the term~~ "cigarette" has the meaning defined in 16-11-102 and "tobacco product" ~~has the meaning defined in 16-11-201~~ means all products containing tobacco for human consumption or use except cigarettes."

Section 8. Section 16-11-102, MCA, is amended to read:

"16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) ~~"Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.~~

(a) "Contraband" means:

(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;

(ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;

(iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;

(iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or

(v) any cigarettes or tobacco products that violate 16-10-306.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

~~(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.~~

(a) *"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:*

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subsection (2)(a)(i).

(b) *"Controlling person" means a person who owns an equity interest of 10% or more of a business or the equivalent.*

(c) *"Directory" means the tobacco product directory as provided in 16-11-504.*

~~(b)~~(d) *"Full face value of insignia" means the total amount of the tax levied under this part.*

~~(e)~~(e) *"Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.*

~~(d)~~(f) *"Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette tobacco product vendor, who is licensed under the provisions of this part.*

~~(e)~~(g) *"Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.*

~~(f)~~(h) *"Licensed wholesaler" means a wholesaler licensed under the provisions of this part.*

~~(g)~~(i) *"Manufacturer" means any person who fabricates cigarettes tobacco products from raw materials for the purpose of resale.*

~~(h) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.~~

(j) *"Manufacturer's original container" means the original master shipping case or original shipping case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to warehouse distribution points.*

(k) *"Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.*

~~(i)~~(l) *"Record" means an original document, a legible facsimile, or an electronically preserved copy.*

~~(j)~~(m) "Retailer" means a person, *other than a wholesaler, who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail* is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

(n) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

~~(k)~~(o) "Sale" or "sell" means any transfer of ~~cigarettes~~ tobacco products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

~~(h)~~(p) "Sole distributor" means a person who either causes a unique brand of ~~cigarettes~~ tobacco products to be manufactured according to distinctive specifications and acts as the exclusive distributor of the ~~cigarettes~~ tobacco products or is the exclusive distributor of a brand of ~~cigarettes~~ tobacco products within the continental United States.

~~(m)~~(q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the ~~cigarettes~~ tobacco products to a licensed retailer or ~~cigarette~~ tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

(r) "Tobacco product" means cigarettes and all other products containing tobacco that are intended for human consumption or use.

(s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the person operates for a profit in premises or locations other than the person's own.

(ii) A tobacco product vendor must be treated as a wholesaler.

(t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or reduction.

~~(n)~~(u) "Wholesaler" means a person who ~~services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:~~

(i) purchases ~~cigarettes~~ tobacco products from a manufacturer for the purpose of selling ~~cigarettes~~ tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers; or

(ii) purchases ~~cigarettes~~ tobacco products from a sole distributor, another wholesaler, or any other person for the purpose of selling ~~cigarettes~~ tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."

Section 9. Section 16-11-103, MCA, is amended to read:

"16-11-103. Powers of department. (1) The department ~~shall have the power and authority to~~ may prescribe all rules not inconsistent with the

provisions of this ~~part chapter~~ for the detailed and efficient administration of this ~~part chapter~~. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by ~~part 2 of this chapter~~.

(2) The department of revenue and the department of justice and ~~its~~ their duly authorized agents ~~are empowered to~~ may conduct inquiries and hearings, and any member of the department of revenue, department of justice, or any agent ~~is authorized to~~ may administer oaths and take testimony under oath relative to the matter of inquiry. The director, ~~the attorney general~~, or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director, ~~the attorney general~~, or ~~the director's~~ an agent, after the hearing, shall make findings and issue an order in writing, ~~which~~ The findings and order must be filed in the office of the department of revenue or the department of justice and must be open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this ~~part chapter~~. The department may appoint additional assistants and establish an additional division of ~~cigarette tobacco product~~ enforcement as required to carry out the provisions of this ~~part chapter~~.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this ~~part chapter~~.

(5) *The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.*

(6) *When requested by the department of revenue, the department of justice shall:*

(a) *investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of tobacco products; and*

(b) *serve as a liaison to local law enforcement authorities in matters relating to tobacco law enforcement."*

Section 10. Section 16-11-104, MCA, is amended to read:

"16-11-104. Carriers to report cigarette shipments — penalties. (1) ~~Every~~ Except as provided in subsection (3), every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state or country any ~~cigarettes~~ tobacco products shall, if requested by the department, report in writing ~~such the~~ shipments or deliveries to the department on forms furnished by the department. ~~The reports must include giving the date, the person to whom the same was tobacco products were consigned and delivered, the quantity as shown by the bill of lading, and such other information as that the department may require.~~ A carrier shall retain for ~~30~~ 36 months all pertinent and relevant records necessary for the preparation of this report and any other information ~~that~~ the department may require.

(2) *A common carrier who violates the provisions of subsection (1) is subject to civil penalties as determined by the department. For a first offense, a natural person shall be fined an amount not to exceed \$50,000, and any other entity shall be fined an amount not to exceed \$75,000. For a second or subsequent offense, a*

natural person shall be fined an amount not to exceed \$100,000, and any other entity shall be fined an amount not to exceed \$150,000.

(3) A common carrier hauling, transporting, or shipping tobacco products to a licensed wholesaler or retailer in Montana shall submit the reports described in subsection (1) to the department upon request of the department."

Section 11. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette, tobacco products, and moist snuff sales tax — exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

(7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist

snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the total billing cost."

Section 12. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. (1) Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

~~(1)(a)~~ 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

~~(2)(b)~~ 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

~~(3)(c)~~ 0.45% for purchases in excess of 5,160 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Section 13. Section 16-11-118, MCA, is amended to read:

"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers. (1) All wholesalers and subjobbers shall keep for ~~5~~ 3 years all:

(a) invoices of ~~cigarettes~~ tobacco products purchased, ~~and~~ imported, or sold;

(b) all receipts issued and insignia purchased; and

(c) an accurate record of all sales of ~~cigarettes~~ tobacco products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers and tobacco product vendors shall keep for 3 years all invoices of tobacco products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, or tobacco product vendor shall permit the department and the department of justice and their assistants, authorized

agents, or representatives to examine all ~~cigarettes~~ *tobacco products*, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000."

Section 14. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 15-1-501 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 15. Section 16-11-120, MCA, is amended to read:

"16-11-120. Cigarette Tobacco product licenses. Every wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information ~~as that the department may require in~~ *regularly promulgated rules by rule*. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes."

Section 16. Section 16-11-122, MCA, is amended to read:

"16-11-122. License fees — renewal. (1) Each application for a wholesaler's license *or a tobacco product vendor's license* must be accompanied by a fee of \$50.

(2) Each application for a subjobber's license must be accompanied by a fee of \$50.

(3) Each application for a retailer's license must be accompanied by a fee of \$5.

(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(5) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable.”

Section 17. Section 16-11-131, MCA, is amended to read:

“16-11-131. Transporting ~~cigarettes~~ tobacco products without insignia compliance a misdemeanor — invoices and delivery tickets required — stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any ~~cigarettes~~ tobacco products that do not bear the insignia (stamps) required by this part ~~comply with the requirements of this chapter.~~

(2) (a) When transporting unstamped cigarettes *or roll-your-own tobacco*, a person shall possess invoices or delivery tickets for the cigarettes *or roll-your-own tobacco* that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes *or roll-your-own tobacco* being transported.

(b) The cigarettes *or roll-your-own tobacco* transported are *contraband and are subject to seizure, forfeiture, destruction, and sale as provided in 16-11-141, 16-11-147, 16-11-158, [section 6], 16-11-509, and this section if:*

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; ~~or~~

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes *or roll-your-own tobacco*; *or*

(iv) the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory.

(3) Transportation of cigarettes *or roll-your-own tobacco* from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes *or cigarettes or roll-your-own tobacco that are not on the directory* possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting ~~cigarettes~~ tobacco products in violation of this ~~section~~ chapter, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) When a person engaged in the business of selling tobacco products ships or causes to be shipped any tobacco products to any person in this state that are not in the tobacco product manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the words "tobacco products".

~~(5)~~(6) A person violating the provisions of this section is guilty of a misdemeanor *and is subject to the penalties in 16-11-148.*”

Section 18. Section 16-11-132, MCA, is amended to read:

“16-11-132. Unlawful to sell ~~cigarettes~~ tobacco products without valid license — exceptions. (1) ~~A Unless approved by the department, a~~ person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, unless the person’s license is current and valid under the provisions of this part.

(2) A person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, *tobacco product vendor*, or retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to sell ~~cigarettes~~ tobacco products. However, a wholesaler, subjobber, *tobacco product vendor*, or retailer licensed under the provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, *tobacco product vendor*, or retailer not licensed under this chapter if:

(a) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer is exempt from state ~~cigarette~~ tobacco product taxation provisions;

(b) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer furnishes documentary evidence of exemption from state ~~cigarette~~ tobacco product taxation provisions; and

(c) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer signs a receipt of purchase for any ~~cigarettes~~ tobacco products evidencing an exemption from state ~~cigarette~~ tobacco product taxation provisions.

(3) A person violating the provisions of this section ~~is guilty of a misdemeanor and~~ shall be punished as provided in ~~this part 16-11-148~~, and all ~~cigarettes~~ tobacco products in the person’s possession must be seized, ~~and forfeited, to the state and destroyed pursuant to 16-11-147, 16-11-158, and [section 6].”~~

Section 19. Section 16-11-133, MCA, is amended to read:

“16-11-133. Sale and use of cigarettes without insignia unlawful. (1) ~~A Unless approved by the department, a~~ person who sells any package of cigarettes that does not bear the insignia required by this part and a person who uses or consumes a cigarette within this state, taken from a package that does not bear the required insignia, is guilty of a misdemeanor ~~and is subject to the penalties in 16-11-148.~~

(2) *This section may not be construed to prohibit a natural person from physically transporting into the state of Montana for the person’s own personal consumption or use, a maximum of:*

(a) *600 cigarettes that bear the tax insignia of another state; or*

(b) *30 ounces of tobacco products, other than cigarettes, on which the tobacco taxes of another state have been paid.”*

Section 20. Section 16-11-141, MCA, is amended to read:

“16-11-141. Powers of arrest — search and seizure. (1) The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this ~~part~~ chapter, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence ~~any unlawful or unlawfully possessed license, stamp, or insignia~~ contraband found in the possession of any person or in any place.

(2) *Any investigator or peace officer who finds a tobacco product that the investigator or peace officer has reasonable cause to believe is contraband may*

seize and remove the contraband and the packages in which the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other penalty prescribed by this chapter, be forfeited to the state of Montana as provided in [section 6] and destroyed as provided in 16-11-158."

Section 21. Section 16-11-142, MCA, is amended to read:

"16-11-142. Duties of county attorneys and peace officers. In the enforcement of this ~~part~~ chapter, the department of justice may call to its assistance; and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this ~~part~~ chapter."

Section 22. Section 16-11-143, MCA, is amended to read:

"16-11-143. Penalty and interest for unpaid ~~cigarette~~ tobacco product tax. (1) If a person fails or refuses to pay the *tobacco product* tax required by this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus penalty and interest as provided in 15-1-216.

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid *tobacco product* tax, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in treble the amount of the tax found to be due."

Section 23. Section 16-11-144, MCA, is amended to read:

"16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, *tobacco product vendor*, retailer, ~~cigarette vendor~~, or person licensed under 16-11-303 for failure to comply with any provision of this ~~part~~, The Montana Cigarette Sales Act (Title 16, chapter 10), the Youth Access to Tobacco Products Control Act (Title 16, ~~chapter 11, part 3~~) *this chapter*, or with any lawful rule of the department made pursuant to those laws.

(2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which must be open to the public. If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1 year.

(4) A person who sells ~~cigarettes~~ *tobacco products* after the person's license has been revoked or suspended is guilty of a misdemeanor and ~~must be punished as provided in this part~~ *is subject to the penalties in 16-11-148*, and all ~~cigarettes~~ *tobacco products* in the person's possession must be seized and forfeited to the state."

Section 24. Section 16-11-145, MCA, is amended to read:

"16-11-145. Place where violations committed a considered public nuisance. Each person having possession or control of or who maintains a building or place where ~~cigarettes~~ *tobacco products* are sold in violation of this ~~part~~ chapter or who permits the ~~cigarettes~~ *tobacco products* to be sold in violation of this ~~part~~ chapter in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping a nuisance. The

building or place so used, together with the personal property and fixtures used in connection therewith *with the building*, is considered a nuisance. The person must be enjoined and the building or place, personal property, and fixtures abated as a nuisance at the instance of the state."

Section 25. Section 16-11-146, MCA, is amended to read:

"16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years. *In addition, the department may impose the civil penalties in 16-11-148.*"

Section 26. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of ~~unlawful cigarettes property used in transporting contraband.~~ ~~(1)~~ A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which ~~cigarettes are contraband~~, with a value of \$1,000 or more, is being unlawfully transported, together with the ~~cigarettes contraband~~ and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in ~~subsection (2)~~ [section 6].

~~(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.~~

~~(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.~~

~~(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."~~

Section 27. Section 16-11-148, MCA, is amended to read:

"16-11-148. Violation a misdemeanor unless otherwise provided — penalties Penalties and other remedies. (1) Unless otherwise provided, the purposeful, knowing, or negligent violation of any provision of this part constitutes a misdemeanor. A person violating any provision of this part shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months *punishable by imprisonment for a term of up to 1 year or by a fine of up to \$1,000, or both. For a first offense, if a violation of this part involves contraband, the value of which does not exceed \$1,000, the offense is punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both.* If the person is the holder of a license issued under this part, the license must be revoked by the department for 1 year. *Second and*

subsequent purposeful, knowing, or negligent violations of any provision of this part constitutes a felony punishable by imprisonment for a term exceeding 1 year or a fine not to exceed \$50,000, or both.

(2) In addition to any other civil or criminal remedy provided by law, upon a determination that a license holder under this part has violated any section in this part or any rule adopted pursuant to this part, the license may be suspended or revoked in the manner provided in 16-11-144 in a proceeding brought by the department or the attorney general.

(3) (a) Except as provided in subsection (3)(b), in addition to the criminal penalties provided in subsection (1), the department or the department of justice may assess a person who violates any provision of this part a civil penalty of \$250 for the first full or partial pack of contraband cigarettes and \$10 for each additional full or partial pack of contraband cigarettes. For purposes of this definition of cigarette, 0.09 ounces of roll-your-own tobacco constitutes one individual cigarette. Each tax insignia affixed and each offer to sell, sale, or possession for sale of cigarettes in violation of this part constitutes a separate violation.

(b) A civil penalty may not be assessed to a person for a first violation of subsection (1) if the offense involves contraband with a value of \$1,000 or less.

(4) The department or the department of justice shall determine the amount of the penalty provided in subsection (3) and notify the person who unlawfully possessed or transported the contraband cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year."

Section 28. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before state tax appeal board. A person aggrieved by any action of the department or its authorized agents ~~under taken to enforce~~ the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 29. Section 16-11-150, MCA, is amended to read:

"16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the ~~state tax appeal board~~ *department or the department of justice* or a licensing decision of the department made under the provisions of this part may appeal ~~therefrom~~ to the district court in accordance with the Montana Administrative Procedure Act."

Section 30. Section 16-11-155, MCA, is amended to read:

"16-11-155. Definitions. As used in 16-11-111, and 16-11-155, through 16-11-156, and 16-11-158, the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement."

Section 31. Section 16-11-158, MCA, is amended to read:

"16-11-158. Sale or retention of forfeited property — use of sale proceeds — *destruction of contraband*. (1) When property is forfeited under ~~16-11-147~~ [section 6], the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of ~~16-11-111, 16-11-131, 16-11-147, and 16-11-155~~ through 16-11-158 ~~this chapter~~ or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property, *other than contraband*, at public auction to the highest bidder. ~~The department, before delivering a seized item, shall first require stamps to be affixed.~~

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the ~~items~~ property, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

(3) *Contraband forfeited under [section 6] must be destroyed.*"

Section 32. Section 16-11-507, MCA, is amended to read:

"16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 ~~or 16-11-203~~ and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal,

state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 33. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(c); and
- (b) money from taxes on tobacco products other than cigarettes deposited under ~~16-11-206(1)(b)~~ 16-11-119(3)(b).

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children’s health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 34. Enforcement. The attorney general, a designee of the attorney general, or any person who holds a permit under 26 U.S.C. 5713 may bring an action in the appropriate Montana district court to prevent or restrain violations of [section 5] by any person or by a principal of the person.

Section 35. Repealer. Sections 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, and 16-11-206, MCA, are repealed.

Section 36. Codification instruction. [Sections 1 through 6 and 34] are intended to be codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 6 and 34].

Section 37. Effective date. [This act] is effective 90 days after passage and approval.

Approved April 28, 2005

CHAPTER NO. 512

[HB 696]

AN ACT PROVIDING THAT AN EXPRESS PURPOSE OF THE MONTANA YOUTH COURT ACT IS TO PROVIDE THAT WHENEVER A YOUTH IS REMOVED FROM THE HOME, THE YOUTH IS ENTITLED TO MAINTAIN ETHNIC, CULTURAL, OR RELIGIOUS HERITAGE WHEN APPROPRIATE; AMENDING SECTION 41-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-102, MCA, is amended to read:

“41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that ~~provides~~ *provides*:

(a) immediate, consistent, enforceable, and avoidable consequences of youths’ actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders; ~~and~~

(c) in appropriate cases, restitution as ordered by the youth court; *and*

(d) *that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;*

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 513

[HB 701]

AN ACT GENERALLY REVISING LAWS RELATING TO DECEDENTS' ESTATES, PRINCIPAL AND INCOME ALLOCATIONS, AND TRUSTS; AMENDING SECTIONS 30-10-909, 72-3-1101, 72-4-303, 72-16-906, AND 72-34-442, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-909, MCA, is amended to read:

“30-10-909. Fraudulent and other prohibited practices. ~~(1)~~ It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

~~(a)~~(1) employ any device, scheme, or artifice to defraud;

~~(b)~~(2) make any untrue statement of a material fact;

~~(c)~~(3) fail to state a material fact necessary to render any statement made not misleading; or

~~(d)~~(4) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

~~(2) It is unlawful for a person to sell a living trust to a person for whom a living trust is not suitable.”~~

Section 2. Section 72-3-1101, MCA, is amended to read:

“72-3-1101. Collection of personal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~\$20,000~~ *\$50,000*;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

Section 3. Section 72-4-303, MCA, is amended to read:

"72-4-303. Filing of letters, bond, inventory, and affidavit. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file ~~in duplicate~~ with a district court in this state in a county in which property belonging to the decedent is located:

(a) ~~an authenticated copies~~ *copy* of the personal representative's appointment and of any official bond given;

(b) an inventory of the property of the nonresident decedent located in this state, which must contain the information prescribed in 72-3-607; and

(c) an affidavit stating:

(i) the date of death of the nonresident decedent; and

(ii) that no local administration or application or petition for local administration is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying the representative as having registered with the district court and stating the name and date of death of the decedent."

Section 4. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required filing of United States estate tax return. The personal representative or domiciliary foreign personal representative of the estate of any decedent *who died prior to January 1, 2005*, whose estate is required to file a United States estate tax return shall file a duplicate of the United States estate tax return with the department of revenue."

Section 5. Section 72-34-442, MCA, is amended to read:

"72-34-442. Receipts from liquidating assets — allocation. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to 72-34-441, natural resources subject to 72-34-443, timber subject to 72-34-444, a derivative or option subject to 72-34-446, an asset subject to 72-34-447, or any asset for which the trustee establishes a reserve for depreciation under 72-34-450.

(2) A trustee shall allocate to income ~~10%~~ *85%* from a liquidating asset and the balance to principal."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [Section 4] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2004, for which the probate of the decedents' estates closes after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 514

[HB 704]

AN ACT PROVIDING TIMEFRAMES FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE RESULTS OF SURVEYS AND INFORMAL DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES; AMENDING SECTION 53-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-109, MCA, is amended to read:

“53-6-109. Consistent regulation of long-term care facilities — rulemaking authority — *timeframes*. (1) In order to provide more consistent regulation of long-term care facilities that provide intermediate and skilled nursing care statewide, the department shall adopt rules in consultation with long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate consumer groups ~~by July 1, 2003~~, that:

~~(1)(a)~~ define the following terms used in the survey and certification process for long-term care facilities that provide intermediate and skilled nursing care:

- ~~(a)(i)~~ actual harm;
- ~~(b)(ii)~~ potential for more than minimal harm;
- ~~(c)(iii)~~ avoidable;
- ~~(d)(iv)~~ unavoidable; and
- ~~(e)(v)~~ immediate jeopardy;

~~(2)(b)~~ define an informal dispute resolution process to provide nursing homes with an opportunity to respond to survey findings and deficiency citations that are believed to be made in error. The rules must be consistent with the purpose of informal dispute resolution that is intended to give the provider an opportunity to demonstrate that a deficiency has been applied in error or is a misjudgment of true facts. The objective of the process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative hearings with the state, as provided for in 53-6-108, or the federal government agencies that are responsible for the enforcement of remedies. The process must provide for an objective review of the raised issues by an individual who is independent of the survey process and who can evaluate the legal sufficiency of the findings of the surveyors. *The department shall provide a written determination of the outcome of the informal dispute resolution process within 60 days from the date that the dispute is submitted to the individual conducting the dispute resolution process. As used in this subsection (1)(b), “submitted” means that the provider and any other party to the dispute have provided their final position statements or arguments to the individual conducting the dispute resolution process, along with any supporting documents, within the time established by that individual.*

~~(3)(c)~~ define standards for survey determinations in which the surveyors question the efficacy of orders for drugs and treatments made by a resident’s attending physician. The standards must recognize that a written physician’s order provides evidence of medical necessity and the appropriateness of the drugs and treatments ordered, unless the survey agency alleges substandard practice by the physician. The standards must provide for the reporting of any substandard practice of a physician to the board of medical examiners by the

surveyors. The standards must outline a facility's responsibilities in monitoring drugs and treatments ordered for residents and for consulting with the attending physician as appropriate.

(2) The department shall inform long-term care facilities of the results of any survey, certification survey, complaint survey, or postsurvey revisit within 10 working days of the last date of the survey on the form provided by the centers for medicare and medicaid services for that purpose."

Section 2. No appropriation. It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 515

[HB 707]

AN ACT INCREASING THE COMPENSATION PAID TO FISH, WILDLIFE, AND PARKS LICENSE AGENTS; ALLOWING LICENSE AGENTS TO CHARGE A CONVENIENCE FEE FOR PURCHASES MADE WITH A CREDIT CARD OR A DEBIT CARD; REVISING THE DEFINITION OF "TRANSACTION" TO INCLUDE THE COLLECTION OF ANY DATA OR FEE; AMENDING SECTION 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, *plus any additional amount as determined by rules adopted pursuant to subsection (9).*

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

~~(2)~~(3) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission *and convenience fee.*

~~(3)~~(4) Each license agent shall submit to the department copies of each *paper* license sold.

~~(4)~~(5) The department may charge license agents appointed after March 1, 1998, an electronic license system ~~installation~~ fee not to exceed actual costs.

~~(5)~~(6) The department may designate classes of license agents and may establish a ~~deadline for submission of license money~~ *by protocol* for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

~~(6)~~(7) For purposes of this section, the term "transaction" includes the sale of any license; *or permit, collection of any data or fee, or issuance of any certificate* prescribed by the department.

~~(7)~~(8) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate *commission and convenience* fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 ~~must~~ *may* be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

~~(8)~~(9) The department may adopt rules necessary to implement this section.”

Section 2. Coordination instruction. If House Bill No. 172 is not passed and approved, then [section 1(1) and (7) of this act] is void.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 516

[HB 720]

AN ACT REQUIRING LOCAL GOVERNMENTS TO REVIEW APPLICATIONS FOR DEVELOPMENT AND USE OF PROPERTY UNDER REGULATIONS IN EFFECT AT THE TIME THAT A COMPLETE SITE-SPECIFIC DEVELOPMENT PLAN IS SUBMITTED; AND PROVIDING EXCEPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings and purpose. (1) The legislature finds that:

- (a) it is necessary and desirable as a matter of public policy to:
 - (i) provide for reasonable certainty, stability, and fairness in the land use planning and regulatory process;
 - (ii) stimulate economic growth;
 - (iii) secure the reasonable investment-backed expectations of a landowner; and
 - (iv) foster cooperation between the public and private sectors in land use planning and regulation;
 - (b) the ability of a landowner to be certain of the applicable regulations and review procedures upon submitting a complete application for local government approval of a site-specific development plan will preserve the prerogatives and authority of a local government with respect to land use matters;
 - (c) the establishment of regulatory certainty will promote the goals specified in this section in a manner consistent with Article II, sections 3, 17, and 29, of the Montana constitution that guarantees to each person the inalienable right to acquire, possess, and protect property and that recognizes the corresponding responsibilities and is a matter of statewide concern.
- (2) It is the purpose of [sections 1 through 3] to:
- (a) provide fair standards to protect the rights of a person who submits a development application to a local government while recognizing the public health, safety, and general welfare purposes of development review; and
 - (b) require a local government to comply with these standards.

Section 2. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) “Landowner” means an owner of a legal or equitable interest in real property. The term includes an heir, a successor, or an assignee of the ownership interest.

(2) “Local government” means the governing body of a county, a municipality, or a consolidated city-county that exercises planning or zoning authority. The term includes a board, commission, or agency of the local government that has review or approval authority of a site-specific development plan.

(3) “Property” means real property subject to land use regulation by a local government.

(4) (a) “Site-specific development plan” means a plan that has been submitted to a local government by a landowner or the landowner’s representative and that describes, with reasonable certainty, the type, density, and intensity of use for a specific property. The plan may be in the form of but is not limited to an application or plan for:

- (i) a site plan;
 - (ii) a conditional or special use approval; or
 - (iii) any other land use approval designation used by a local government.
- (b) The term does not include a request for a variance.

Section 3. Local government regulations — restrictions. (1) Unless a specific review process for an application is otherwise provided by law, the local government shall provide the applicant with a written receipt showing the date and time that the site-specific development plan was first submitted to the local government. The local government shall establish, by ordinance or resolution, a completeness review process, including time periods within which to determine whether the application contains all of the information required by the local government’s ordinances, resolutions, or other regulations, and shall notify the applicant of the local government’s determination as to whether or not the application is complete. If the applicant fails to submit the missing information within any applicable time period, the local government may deny approval of the site-specific development plan as an incomplete submission. A determination that a site-specific development plan is complete under this section does not limit the ability of the local government to request additional information during the review process.

(2) Except as provided under 76-2-206 or 76-2-306 or unless otherwise agreed to in writing by the applicant, the review and approval, approval with conditions, or denial of the site-specific development plan must be based solely upon the ordinances and regulations in effect at the time that the complete site-specific development plan was submitted to the local government entity that has jurisdiction over the application. Nothing in this subsection affects the ability of a local government to develop and impose conditions on a site-specific development plan as otherwise provided by law or by locally adopted ordinances or regulations.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 3].

Approved April 28, 2005

CHAPTER NO. 517

[HB 726]

AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH MONTANA CORPORATIONS TO OPERATE DAY REPORTING PROGRAMS TO PROVIDE AN ALTERNATE SENTENCING OPTION AND TO SANCTION PROBATION VIOLATORS; PROVIDING THAT A CONVICTED PERSON PAY A \$50 PRESENTENCE REPORT FEE TO FUND THE ALTERNATE SENTENCING OPTION; AMENDING SECTIONS 46-18-111, 46-18-201, 46-18-225, 46-23-1015, 53-1-203, AND 53-1-501, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

“46-18-111. Presentence investigation — when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) *The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4).”*

Section 2. Section 46-18-201, MCA, is amended to read:

“46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred

imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

- (a) limited release during employment hours as provided in 46-18-701;
 - (b) incarceration in a detention center not exceeding 180 days;
 - (c) conditions for probation;
 - (d) payment of the costs of confinement;
 - (e) payment of a fine as provided in 46-18-231;
 - (f) payment of costs as provided in 46-18-232 and 46-18-233;
 - (g) payment of costs of court-appointed counsel as provided in 46-8-113;
 - (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
 - (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
 - (j) community service;
 - (k) home arrest as provided in Title 46, chapter 18, part 10;
 - (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
 - (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
 - (n) *participation in a day reporting program provided for in 53-1-203;*
 - ~~(n)~~(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
 - ~~(o)~~(p) any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(n)~~ (4)(p).
- (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.
- (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.
- (8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 3. Section 46-18-225, MCA, is amended to read:

“46-18-225. Sentencing of nonviolent felony offenders — criteria — alternatives to be considered — court to state reasons for imprisonment. (1) In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of the offender in a community corrections facility or program, a prerelease center, ~~or~~ a prerelease program, *or a day reporting program provided for in 53-1-203.* In considering alternatives to imprisonment, the sentencing judge shall examine the sentencing criteria contained in subsection (2).

(2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in a state prison, the sentencing judge shall take into account whether:

(a) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in a state prison;

(b) the needs of the offender can be better served in the community or in a facility or program other than a state prison;

(c) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(d) the offender acted under strong provocation;

(e) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(f) the offender has no prior history of conviction for a criminal act or, if the offender has a prior history of conviction for a criminal act, the offender has led a law-abiding life for a substantial period of time before the commission of the present crime;

(g) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(h) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(i) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(j) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

(3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge did not select an alternative to imprisonment, based on the criteria contained in subsection (2).”

Section 4. Section 46-23-1015, MCA, is amended to read:

“46-23-1015. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer

may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, *or order the probationer to participate in a day reporting program as provided for in 53-1-203* and order the probationer to pay the costs of incarceration *or participation in the day reporting program*. The department shall pay the incarceration costs not paid by the probationer.

(4) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable to a probationer ordered to be held in a county detention center under this section."

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole *or probation*, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

(4) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

Section 6. Section 53-1-501, MCA, is amended to read:

"53-1-501. Rates for residential community correctional program board, room, and services charged by the department of corrections. (1) The department of corrections shall establish per diem rates for room, board, and services for persons placed in or committed to a community correctional program operated by the department of corrections. The department of

corrections may adopt rules allowing it to order part of a person's employment income to be used to pay restitution, fines, and child or spousal support.

(2) The department of corrections shall prescribe rules and procedures for the establishment of rates and charges to residents *or participants* in any community correctional program that is under contract with the department of corrections and that provides room, board, or services or any combination of room, board, and services to residents of those facilities *or to participants in* programs. The amount assessed by these programs must be subject to the resident's ability to pay, based on the rates established as the basis for assessed charges, and subject to approval by the department of corrections."

Section 7. Effective dates. (1) [Section 1] and this section are effective July 1, 2005.

(2) [Sections 2 through 6] are effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 518

[HB 732]

AN ACT ADOPTING AND REVISING LAWS TO IMPLEMENT INDIVIDUAL PRIVACY AND TO PREVENT IDENTITY THEFT; REQUIRING A CONSUMER REPORTING AGENCY TO BLOCK INFORMATION ON A REPORT THAT RESULTS FROM A THEFT OF IDENTITY; PROVIDING PRIVACY PROTECTION PROVISIONS FOR CREDIT CARD SOLICITATIONS AND RENEWALS AND TELEPHONE ACCOUNTS; PROVIDING PRIVACY PROTECTION FOR BUSINESS RECORDS BY REQUIRING DESTRUCTION OF RECORDS; REQUIRING BUSINESSES TO REPORT A BREACH OF COMPUTER SECURITY; PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTION 31-3-115, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-3-115, MCA, is amended to read:

"31-3-115. Adverse information. (1) Whenever a consumer reporting agency prepares an investigative consumer report, ~~no~~ adverse information in the consumer report, (other than information ~~which~~ *that* is a matter of public record), may *not* be included in a subsequent consumer report unless ~~such~~ *the* adverse information has been verified in the process of making ~~such~~ *the* subsequent consumer report.

(2) *A consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, pursuant to 15 U.S.C. 1681c-2."*

Section 2. Identity theft impediments — credit cards — definition.

(1) A credit card issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed application for a credit card that lists an address that is different from the address on the offer or solicitation shall verify the change of address by contacting the person to whom the solicitation or offer was mailed, as provided in [section 3].

(2) Notwithstanding any other provision of law, a person to whom an offer or solicitation to receive a credit card is made is not liable for the unauthorized use

of a credit card issued in response to that offer or solicitation if the credit card issuer does not verify the change of address pursuant to subsection (1) prior to the issuance of the credit card unless the credit card issuer proves that this person actually incurred the charge on the credit card.

(3) When a credit card issuer receives a written or oral request for a change of the cardholder's billing address and then receives a written or oral request for an additional credit card within 10 days after the requested address change, the credit card issuer may not mail the requested additional credit card to the new address or, alternatively, activate the requested additional credit card unless the credit card issuer has verified the change of address.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), a person, firm, partnership, association, corporation, or limited liability company that accepts credit cards for the transaction of business may not print more than the last five digits of the credit card account number or the expiration date upon any receipt provided to the cardholder.

(b) Subsection (4)(a) applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the person's credit card number is by handwriting or by an imprint or copy of the credit card.

(c) Subsection (4)(a) applies beginning January 1, 2008, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use before January 1, 2005.

(d) Subsection (4)(a) applies beginning January 1, 2006, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2005.

(5) (a) As used in this section, "credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(b) "Credit card" does not mean any of the following:

(i) any single credit device used to obtain telephone property, labor, or services in any transaction with an entity under regulation as a public utility;

(ii) any device that may be used to obtain credit pursuant to an electronic fund transfer, but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account;

(iii) any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products that will be used primarily for business rather than personal or family purposes.

Section 3. Identity theft impediments — credit card renewal — telephone accounts. (1) A credit card issuer that receives a change of address request, other than for a correction of a typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that request is received shall send to that cardholder a change of address notification that is addressed to the cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to the effective date of the change of address, the notification must be sent within 30 days of the change of address request. If the replacement credit card is requested after the effective date of the

change of address, the notification must be sent within 30 days of the request for the replacement credit card.

(2) Any business entity that provides telephone accounts that receives a change of address request, other than for a correction of a typographical error, from an account holder who orders new service shall send to that account holder a change of address notification that is addressed to the account holder at the account holder's previous address of record. The notification must be sent within 30 days of the request for new service.

(3) The notice required pursuant to subsection (1) or (2) may be given by telephone or electronic mail communication if the credit card issuer or business entity that provides telephone accounts reasonably believes that it has the current telephone number or electronic mail address for the account holder or cardholder who has requested a change of address. If the notification is in writing, it may not contain the consumer's account number, social security number, or other personal identifying information but may contain the consumer's name, previous address, and new address of record. For business entities described in subsection (2), the notification may also contain the account holder's telephone number.

(4) A credit card issuer or a business entity that provides telephone accounts is not required to send a change of address notification when a change of address request is made in person by a consumer who has presented valid identification or is made by telephone and the requester has provided a unique alphanumeric password.

(5) As used in this section, the following definitions apply:

(a) "Credit card" has the meaning provided in [section 2].

(b) "Telephone account" means an account with a telecommunications carrier, as defined in 69-3-803.

Section 4. Purpose. The purpose of [sections 4 through 8] is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332.

Section 5. Definitions. As used in [sections 4 through 8], unless the context requires otherwise, the following definitions apply:

(1) (a) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) "Individual" means a natural person.

(4) "Personal information" means an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport

number, driver's license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual's finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

(5) (a) "Records" means any material, regardless of the physical form, on which personal information is recorded.

(b) The term does not include publicly available directories containing personal information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

Section 6. Record destruction. A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable.

Section 7. Computer security breach. (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was, or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, the following definitions apply:

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number or state identification card number;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed \$250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals.

Section 8. Department to restrain unlawful acts — penalty. (1) Whenever the department has reason to believe that a person has violated [sections 2 through 8] and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to that person, pursuant to 30-14-111(2).

(2) The provisions of 30-14-111(3) and (4) and 30-14-112 through 30-14-115 apply to [sections 2 through 8].

(3) A violation of [sections 2 through 8] is a violation of 30-14-103, and the penalties for a violation of [sections 2 through 8] are as provided in 30-14-142.

Section 9. Computer security breach. (1) Any licensee or insurance-support organization that conducts business in Montana and that owns or licenses computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery or notice of the breach of the security of the system to any individual whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The notice must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person to whom personal information is disclosed in order for the person to perform an insurance function pursuant to this part that maintains computerized data that includes personal information shall notify the licensee or insurance-support organization of any breach of the security of the system in which the data is maintained immediately following discovery of the breach of the security of the system if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and requests a delay of notice. The notice required by this section must be made after the law enforcement agency determines that the notice will not compromise the investigation.

(4) Licensees, insurance-support organizations, and persons to whom personal information is disclosed pursuant to this part shall develop and maintain an information security policy for the safeguarding of personal information and security breach notice procedures that provide expedient notice to individuals as provided in subsection (1).

(5) For purposes of this section, the following definitions apply:

(a) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a licensee, insurance-support organization, or person to whom information is disclosed pursuant to this part. Acquisition of personal information by a licensee, insurance-support organization, or employee or agent of a person as authorized pursuant to this part is not a breach of the security of the system.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name and the data elements are not encrypted:

(A) social security number;

(B) driver's license number or state identification number;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Section 10. Codification instruction. (1) [Sections 2 through 8] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 2 through 8].

(2) [Section 9] is intended to be codified as an integral part of Title 33, chapter 19, part 3, and the provisions of Title 33, chapter 19, part 3, apply to [section 9].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. (1) Except as provided in subsection (2), [this act] is effective March 1, 2006.

(2) [Sections 1, 10, and 11 and this section] are effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 519

[HB 737]

AN ACT CHANGING THE NAME OF A "PHYSICIAN ASSISTANT-CERTIFIED" TO "PHYSICIAN ASSISTANT" AND THE NAME OF A PLAN FOR THE USE OF A PHYSICIAN ASSISTANT BY A PHYSICIAN FROM "UTILIZATION PLAN" TO "SUPERVISION AGREEMENT"; REVISING REQUIREMENTS FOR A SUPERVISING PHYSICIAN; PROHIBITING THE PRACTICE OF MEDICINE BY A PHYSICIAN ASSISTANT WITHOUT A SUPERVISION AGREEMENT; REVISING PROVISIONS FOR RULEMAKING BY THE BOARD OF MEDICAL EXAMINERS; REVISING THE TYPES OF LICENSES ISSUED TO PHYSICIAN ASSISTANTS; REQUIRING A DUTIES AND DELEGATION AGREEMENT AND PROVIDING FOR THE CONTENT OF A SUPERVISION AGREEMENT AND A DUTIES AND DELEGATION AGREEMENT; REVISING AUTHORITY FOR ISSUANCE OF PHYSICIAN ASSISTANT LICENSES AND LICENSE RENEWALS; PROVIDING FOR EXEMPTIONS FROM Licensure; REVISING THE CRITERIA FOR Licensure OF PHYSICIAN ASSISTANTS; REVISING THE AUTHORITY FOR THE AGENCY RELATIONSHIP BETWEEN A PHYSICIAN ASSISTANT AND THE ASSISTANT'S SUPERVISING PHYSICIAN; REVISING THE DEGREE OF SUPERVISION REQUIRED OF THE SUPERVISING PHYSICIAN; REVISING THE PRESCRIPTION AND DISPENSING AUTHORITY OF A PHYSICIAN ASSISTANT; REMOVING THE PROHIBITION AGAINST A PHYSICIAN ASSISTANT PERFORMING AN ABORTION; PROVIDING FOR THE PRACTICE OF A PHYSICIAN ASSISTANT AND A SUPERVISING PHYSICIAN DURING A DISASTER OR EMERGENCY; AMENDING SECTIONS 2-15-1731, 33-22-111, 33-22-114, 37-3-103, 37-8-103, 37-20-101, 37-20-103, 37-20-104, 37-20-202, 37-20-203, 37-20-301, 37-20-302, 37-20-303, 37-20-401, 37-20-402, 37-20-403, 37-20-404, 37-20-405, 37-20-406, 39-71-116, 41-1-401, 46-4-114, 50-5-101, 50-5-216, 50-16-201, 50-19-101, 50-20-109, 52-5-108, AND 53-6-101, MCA; AND REPEALING SECTION 37-20-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1731, MCA, is amended to read:

“2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

- (a) five members having the degree of doctor of medicine;
- (b) one member having the degree of doctor of osteopathy;
- (c) one member who is a licensed podiatrist;
- (d) one member who is a licensed nutritionist;
- (e) one member who is a licensed physician ~~assistant-certified~~ *assistant*; and
- (f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member must be a citizen of the United States. Each member, except for public members, must have been licensed and must have practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.”

Section 2. Section 33-22-111, MCA, is amended to read:

“33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician ~~assistant-certified~~ *assistant*, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, naturopathic physician, physical therapist, or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person’s practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.”

Section 3. Section 33-22-114, MCA, is amended to read:

“33-22-114. Coverage required for services provided by physician assistants-certified assistants. An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage for health services provided by a

physician ~~assistant-certified~~ *assistant* as normally covered by contracts for services supplied by a physician if health care services that the physician ~~assistant-certified~~ *assistant* is approved to perform are covered by the contract.”

Section 4. Section 37-3-103, MCA, is amended to read:

“37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician’s regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (h) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;
- (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;
- (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.
- (k) the rendering of services by a physical therapist, technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;
- (l) the rendering of services by a physician ~~assistant-certified~~ *assistant* in accordance with Title 37, chapter 20;
- (m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;
- (n) the execution of a death sentence pursuant to 46-19-103;
- (o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 5. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions — limitations on authority conferred. (1) This chapter may not be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved nursing education programs;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;
- (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;
- (i) the execution of a death sentence pursuant to 46-19-103;
- (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board; and
- (k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician ~~assistant-certified~~ *assistant*, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant-certified *assistant*, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

Section 6. Section 37-20-101, MCA, is amended to read:

"37-20-101. Qualifications of supervising physician and physician assistant-certified *assistant*." (1) ~~Each~~ The supervising physician named in the ~~utilization plan~~ *supervision agreement* required by 37-20-301 shall:

(a) possess a current, ~~unrestricted~~ *active* license to practice medicine in this state; ~~and~~

(b) ~~submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan;~~

(c) ~~(b) submit a statement to the board that he will~~ exercise supervision over the physician assistant-certified *assistant* in accordance with ~~any~~ *the* rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; ~~and by the physician assistant.~~

(d) ~~submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.~~

(2) ~~Each~~ A physician assistant-certified *assistant* named in the ~~utilization plan~~ *supervision agreement* required by 37-20-301 ~~shall meet the criteria for~~

~~approval as a physician assistant certified as provided in 37-20-402 must have a current, active Montana physician assistant license."~~

Section 7. Section 37-20-103, MCA, is amended to read:

"37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician ~~assistant certified~~ *assistant* to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. ~~A physician assistant certified may not perform an abortion. A physician assistant may perform an abortion."~~

Section 8. Section 37-20-104, MCA, is amended to read:

"37-20-104. Title and Unlicensed practice — penalties. (1) A person who employs a physician ~~assistant certified~~ *assistant* or holds out to the public that the person is a physician ~~assistant certified~~ *assistant* without ~~the approval of the Montana state board of medical examiners having been issued a Montana physician assistant license~~ is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and ~~receiving approval of submitting a utilization plan~~ *supervision agreement to the board*, a physician ~~assistant certified~~ *assistant* may not ~~engage in the practice of medicine as a physician assistant~~ in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction *and the application of other penalties as provided by law.*"

Section 9. Section 37-20-202, MCA, is amended to read:

"37-20-202. Adoption of rules. The board ~~of medical examiners shall~~ *may* adopt administrative rules to implement the provisions of this chapter ~~that:~~

(1) ~~address the issues of supervision and direction limitations and requirements;~~

(2) ~~address the issue of protocols for interaction of medical personnel with differing responsibilities;~~

(3) ~~specify that a physician may not utilize more than one physician assistant certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;~~

(4) ~~address other considerations pertinent to the approval of physician assistant certified utilization plans and locum tenens utilization plans, and the health care needs of the public;~~

(5) ~~address physician assistant training in Montana; and~~

(6) *and set forth grounds for disciplinary action."*

Section 10. Section 37-20-203, MCA, is amended to read:

"37-20-203. Licensing of physician assistants-certified assistants. The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) ~~a permanent license, signed by the president and subject to periodic renewal; and~~

(2) ~~a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board either an active or inactive~~

license to a physician assistant applying for a license or license renewal in Montana.”

Section 11. Section 37-20-301, MCA, is amended to read:

~~“37-20-301. Utilization plan required — contents — approval Requirements for use of physician assistant — supervision agreement — duties and delegation agreement — content — approval — filing.~~ (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified assistant in the practice of medicine, as defined in 37-3-102, and *as provided in this chapter and* a physician assistant-certified assistant may not be employed or practice as a physician assistant-certified assistant unless the physician assistant-certified assistant:

- (a) is supervised by a ~~licensed~~ physician *licensed in this state*;
 - (b) is licensed by the ~~Montana state board of medical examiners~~; and
 - (c) ~~has received board approval of submitted~~ a physician assistant-certified utilization plan *assistant supervision agreement to the board on a form prescribed by the department*; and
 - (d) *has paid to the board the applicable fees required by the board.*
- (2) ~~A physician assistant-certified utilization plan must set forth in detail the following information:~~
- (a) ~~the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;~~
 - (b) ~~the nature and location of the physician’s medical practice;~~
 - (c) ~~the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;~~
 - (d) ~~the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;~~
 - (e) ~~necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and~~
 - (f) ~~other information the board may consider necessary.~~
- (3) ~~The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:~~
- (a) ~~assigned by the supervising physician;~~
 - (b) ~~within the scope of the training, knowledge, experience, and practice of the supervisory physician; and~~
 - (c) ~~within the scope of the training, knowledge, education, and experience of the physician assistant-certified.~~
- (4) ~~A supervising physician and a physician assistant certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.~~

~~(5) A utilization plan may provide that a physician assistant certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member.~~

(2) A supervising physician and the supervised physician assistant shall execute a duties and delegation agreement constituting a contract that defines the physician assistant's professional relationship with the supervising physician and the limitations on the physician assistant's practice under the supervision of the supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes in the duties of each party occurring over time. The board may by rule specify other requirements for the agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and delegation agreement with a supervising physician by October 1, 2006.

(3) A physician assistant and the physician assistant's supervising physician shall keep the supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon request to a health care provider, a health care facility, a state or federal agency, the board, and any other individual who requests one."

Section 12. Section 37-20-302, MCA, is amended to read:

~~"37-20-302. Utilization plan approval fee — renewal of license — renewal fee~~ *Application for and renewal of license — fees.* (1) ~~A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.~~

~~(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.~~

~~(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.~~

~~(4) A license renewal fee set by the board must be paid at the time the license is renewed.~~

~~(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed. (1) A person desiring to practice as a physician assistant shall submit an application to the department on a form prescribed by the department and pay all applicable fees to the department. The applicant shall provide the authorization necessary for the release of records or other information necessary for licensure to the department. The burden of proving that the applicant has complied with all application requirements is on the applicant. However, the department may make an independent investigation to determine whether the applicant possesses the required qualifications and whether the applicant has ever committed unprofessional conduct.~~

(2) In order to renew a license, a physician assistant shall pay to the department a renewal fee as prescribed by the board. The renewal fee must be paid before the expiration date of the license, as set forth in department rule. The department shall send renewal notices before the renewal is due. Except as provided in 37-1-138, failure to pay a renewal fee results in the expiration of the license.

~~(7)~~(3) Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 13. Section 37-20-303, MCA, is amended to read:

"37-20-303. Exemptions from ~~approval~~ licensure requirement. ~~This chapter does not require the approval of a physician assistant certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapter 3, 4, 6 through 17, or 31. (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:~~

(a) *a physician assistant providing services in an emergency or catastrophe, as provided in [section 31];*

(b) *a federally employed physician assistant;*

(c) *a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;*

(d) *a student physician assistant when practicing in a hospital or clinic in which the student is training;*

(e) *a physical therapist licensed pursuant to Title 37, chapter 11;*

(f) *a medical assistant, as provided in 37-3-104;*

(g) *an emergency medical technician licensed pursuant to Title 50, chapter 6;*
or

(h) *any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.*

(2) *A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant."*

Section 14. Section 37-20-401, MCA, is amended to read:

"37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

~~(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant certified.~~

(2) "Duties and delegation agreement" means a written contract between the supervising physician and the physician assistant that meets the requirements of 37-20-301.

~~(3) "Physician assistant certified" assistant~~ (3) "Physician ~~assistant certified~~ assistant" means a member of a health care team, ~~approved~~ *licensed* by the board, who provides medical services that may include *but are not limited to* examination, diagnosis, prescription of medications, and treatment, ~~as approved by the board,~~ under the supervision of a physician licensed by the board.

~~(4) "Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.~~

(4) "Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board who agrees to a supervision agreement and a duties and delegation agreement.

(5) "*Supervision agreement*" means a written agreement between a supervising physician and a physician assistant providing for the supervision of the physician assistant."

Section 15. Section 37-20-402, MCA, is amended to read:

"37-20-402. Criteria for licensing a physician assistant-certified assistant. A person may not be licensed as a physician assistant-certified assistant in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program ~~approved by the American medical association's committee on allied health education and accreditation~~ *accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs;*

(3) has taken and ~~successfully~~ passed an examination ~~recognized administered by~~ the national commission on the certification of physician assistants; *and*

(4) holds a current certificate from the national commission on the certification of physician assistants; ~~and~~

~~(5) has submitted to the board detailed information on the person's history, education, and experience."~~

Section 16. Section 37-20-403, MCA, is amended to read:

"37-20-403. Physician assistant-certified assistant as agent of supervising physician — degree of supervision required — scope of practice. (1) ~~In establishing protocol, a~~ A physician assistant-certified ~~must be~~ *assistant is* considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified ~~under the utilization plan assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter.~~ A health care provider shall consider the instructions of a physician assistant-certified *assistant* as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified ~~under the utilization plan assistant.~~

(2) ~~The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis. Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician's absence.~~

(3) *A physician assistant may diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality authorized by the supervising physician.*

Section 17. Section 37-20-404, MCA, is amended to read:

“37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician ~~assistant-certified assistant~~ may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority ~~granted by the board supervising physician.~~

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician ~~assistant-certified assistant~~ may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician ~~assistant-certified assistant~~ shall maintain registration with the federal drug enforcement administration *if the physician assistant is authorized by the supervising physician to prescribe controlled substances.*

(e) ~~Prescriptions~~ *A prescription* written by a physician ~~assistants-certified assistant~~ must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(f) ~~The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.~~

Section 18. Section 37-20-405, MCA, is amended to read:

“37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill for *a service provided by a supervised physician assistant-certified services assistant.*

Section 19. Section 37-20-406, MCA, is amended to read:

“37-20-406. Liaison to board. The Montana academy of physician assistants ~~shall elect~~ *may appoint* one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.”

Section 20. Section 39-71-116, MCA, is amended to read:

“39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) “Actual wage loss” means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
- (b) an unmarried child under 18 years of age;
- (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
- (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;
- (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and
- (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work;

(b) ~~but~~ *The term* does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a

recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

(26) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) “Reasonably safe tools and appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education, work history, and other factors that affect the worker’s ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) “Temporary partial disability” means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) “Temporary service contractor” means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client’s workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) “Temporary total disability” means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician ~~assistant-certified~~ *assistant* licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician ~~assistant-certified~~ *assistant* is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year."

Section 21. Section 41-1-401, MCA, is amended to read:

"41-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician ~~assistants-certified~~ *assistants*, professional counselors, or social workers."

Section 22. Section 46-4-114, MCA, is amended to read:

“46-4-114. Reporting fetal deaths. A licensed nurse, a midwife, a physician ~~assistant-certified~~ *assistant*, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.”

Section 23. Section 50-5-101, MCA, is amended to read:

“50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) “Accreditation” means a designation of approval.
- (2) “Accreditation association for ambulatory health care” means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.
- (3) “Activities of daily living” means tasks usually performed in the course of a normal day in a resident’s life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.
- (4) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.
- (5) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.
- (b) As used in this subsection (5), the following definitions apply:
 - (i) “Aged person” means a person as defined by department rule as aged.
 - (ii) “Custodial care” means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person’s basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.
 - (iii) “Disabled adult” means a person who is 18 years of age or older and who is defined by department rule as disabled.
 - (iv) (A) “Light personal care” means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.
 - (B) The term does not include the administration of prescriptive medications.
- (6) “Affected person” means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.
- (7) “Assisted living facility” means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes

hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.

(b) The term does not include critical access hospitals.

(29) "Infirmity" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmity—A" provides outpatient and inpatient care;

(b) an "infirmity—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, ~~physician assistant-certified assistant~~, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a

case-by-case basis if the individual's attending physician, physician ~~assistant-certified~~ *assistant*, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these

services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 24. Section 50-5-216, MCA, is amended to read:

"50-5-216. Limitation on care provided in adult foster care home. (1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or for an adult who resided in the home before reaching 18 years of age, even though the adult is:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or
- (e) unable to self-administer medications.

(3) An adult foster care home that applies for a license under subsection (2) shall provide the department with a copy of the statement required in subsection (4).

(4) A resident of an adult foster care home licensed under subsection (2) must have a certification in the form of a signed statement, renewed on an

annual basis, from a physician, a physician ~~assistant-certified~~ *assistant*, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:

(a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and

(b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician."

Section 25. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician ~~assistant-certified~~ *assistant* pursuant to 37-20-203."

Section 26. Section 50-19-101, MCA, is amended to read:

"50-19-101. Definitions. (1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care provider" means a licensed physician, a physician ~~assistant-certified~~ *assistant*, a registered nurse, an advanced practice registered nurse, a naturopathic physician, or a direct-entry midwife practicing within the scope of the provider's professional license.

(3) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, and a screening for hepatitis B surface antigen, approved by the department."

Section 27. Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) Except as provided in 50-20-401, an abortion may not be performed within the state of Montana:

(a) except by a licensed physician *or physician assistant*;

(b) after viability of the fetus, except as provided in subsection (2).

(2) An abortion under subsection (1)(b) may be performed only to preserve the life or health of the mother and only if:

(a) the judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible impairment of a major bodily function.

(5) ~~The utilization plan supervision agreement of a physician assistant-certified assistant may not provide for performing abortions.~~

(6) Violation of subsections (1) through (3) ~~and (5)~~ is a felony."

Section 28. Section 52-5-108, MCA, is amended to read:

"52-5-108. Medical examination before admission — records required to accompany youth committed. (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills youth correctional facility or another facility under an order of commitment to the department of corrections, the youth must be examined by a licensed physician ~~assistant-certified assistant~~, by an advanced practice registered nurse, or by a licensed physician. A youth committed to the Pine Hills youth correctional facility or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the youth."

Section 29. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The

department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services that are provided by physician ~~assistants-certified~~ *assistants* within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medicaid program provided by the Montana medicaid program may, as provided by department rule, also include the following services:

- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (b) home health care services;
- (c) private-duty nursing services;
- (d) dental services;
- (e) physical therapy services;
- (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
- (g) clinical social worker services;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise

curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 30. Unlawful acts. A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

Section 31. Participation in disaster and emergency care — liability of physician assistant and supervising physician. (1) A physician assistant licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal employer who provides medical care in response to an emergency or a federal, state, or local disaster may provide that care either without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this subsection is limited to the duration of the emergency or disaster.

(2) A physician who supervises a physician assistant providing medical care in response to an emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter applicable to supervising physicians.

(3) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency medical care during an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services are normally provided.

(4) A physician who supervises a physician assistant voluntarily and gratuitously providing emergency care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the physician assistant if the injury is caused by simple or ordinary negligence on the part of the physician assistant providing the care or on the part of the supervising physician.

Section 32. Repealer. Section 37-20-201, MCA, is repealed.

Section 33. Name change — directions to code commissioner. (1) Wherever a reference to physician assistant-certified appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to physician assistant.

(2) Wherever a reference to utilization plan, meaning a plan as required by 37-20-301 for the utilization of a physician assistant, appears in legislation

enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to supervision agreement.

Section 34. Codification instruction. [Sections 30 and 31] are intended to be codified as an integral part of Title 37, chapter 20, part 4, and the provisions of Title 37, chapter 20, part 4, apply to [sections 30 and 31].

Approved April 28, 2005

CHAPTER NO. 520

[HB 738]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE AN ADVISORY COMMISSION ON PROVIDER RATES AND SERVICES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR THE DUTIES, MEMBERSHIP, AND ADMINISTRATION OF THE COMMISSION; REQUIRING THE COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS CONCERNING SERVICES PROVIDED BY CONTRACT TO CHILDREN AND ADULTS IN A COMMUNITY SETTING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE COSTS OF THOSE SERVICES, AND REIMBURSEMENT RATES PAID TO THE CONTRACT PROVIDERS OF THOSE SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSIST THE COMMISSION; PROVIDING FOR THE PRIVACY OF CERTAIN CONTRACT INFORMATION; AND REQUIRING THE COMMISSION TO MAKE FINDINGS, RECOMMENDATIONS, AND REPORTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings, purpose, and intent. (1) The legislature finds that services provided by the department to persons who are living in a community setting outside of state institutions and who are persons with developmental disabilities, are mentally ill, or are elderly or very young are essential services, and the essential nature of the services is not diminished because the services are provided by contracts. Because the services provided by contracts are many and are important to the well-being of Montana residents who can least care for themselves, the legislature finds that it is necessary to establish a system under which provider services, the costs of providers, and the reimbursement rates paid to providers are monitored on a regular basis to ensure that state funding is appropriately expended, that consumers' and taxpayers' expectations are attended to, and that the providers of the services are treated fairly.

(2) The purpose of [sections 1 through 6] is to provide a regular, predictable, and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department. The legislature does, however, retain its constitutional duty to enact or amend law concerning contracted services, make appropriations for contracted services through funding of department programs, and review department contracted service programs through the mechanism provided in [sections 1 through 6]. [Sections 1 through 6] are not intended to restrict the legislature in making its appropriate policy and fiscal judgments concerning the value of department programs or services.

(3) It is the intent of the legislature that to the greatest extent practicable, the commission should:

- (a) establish an open and defensible process for conducting its work;
- (b) create a set methodology or protocol through which provider reimbursement rates can be recommended for a service, service level, or population of service consumers served by a provider and the department;
- (c) recommend a list of reimbursable expenses for every service and service level based upon the expenses necessary to provide that service or service level and comply with the licensure, contracts, and administrative rules that govern that service or service level;
- (d) recommend rate equity among service levels within a group of services and between different groups of services; and
- (e) recommend the best and most cost-effective method of regulating and auditing provider services.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

- (1) "Commission" means the commission on provider rates and services established in [section 3].
- (2) "Department" means the department of public health and human services established in 2-15-2201.
- (3) "Director" means the director of the department.
- (4) "Provider" means an entity that contracts with the department to offer services to others.
- (5) "Services" means those services paid for by the department for:
 - (a) a child pursuant to Title 41, Title 42, chapter 3, or Title 52, chapter 2; or
 - (b) a child or an adult in a community or long-term care setting and not in a state institution, pursuant to Title 53.

Section 3. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services, to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership must include a maximum of 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

- (a) at least three providers;
- (b) at least three of a combination of consumers of provider services and family members of consumers;
- (c) two employees of the department;
- (d) one representative from the legislative fiscal division;
- (e) one representative from the governor's office on budget and program planning;
- (f) one member of each of the two major political parties of the house of representatives; and
- (g) one member of each of the two major political parties of the senate.

(2) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

(3) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

(4) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

(5) The commission is allocated to the department for administrative purposes only as provided in 2-15-121.

Section 4. Duties of commission on provider rates and services. (1) The commission shall conduct an ongoing review of provider services, costs, and reimbursement rates. The review must be made without regard to the source of funds for reimbursement payments.

(2) The commission shall consult with the director concerning provider services, costs, and reimbursement rates subject to its review but shall make independent determinations of those matters within its authority. The commission shall establish the order in which provider services, costs, and reimbursement rates will be reviewed by the commission and the methodology that the commission will use in its review.

(3) The commission shall take into account the work of other advisory groups or councils working with the department on subjects concerning its authority and make recommendations to the director and appropriate members of those groups or councils concerning the subject and timing of the work of those groups or councils that will assist the commission and those groups or councils to exercise their legal or other authority and achieve their purpose.

(4) In conducting its review, the commission shall also consider:

- (a) the need for the department to limit expenditures to appropriations;
- (b) existing and future contracts with the department;
- (c) state and federal laws, rules, and regulations; and
- (d) the intention of the legislature to live within available revenue.

(5) In reviewing existing reimbursement rates and recommending new or altered reimbursement rates to be paid to providers, the commission shall consider the following factors:

- (a) the level of financial risk taken by a provider in providing services;
- (b) the complexity of the provider's services;
- (c) the capital investment made by the provider;
- (d) the administrative overhead in the provider's business; and
- (e) any other matter affecting the cost of the provider's services.

Section 5. Department to assist and cooperate with commission on provider rates and services — records privacy. The department shall provide to the commission the maximum assistance that may practicably be

made available to the commission and shall provide the commission with the necessary equipment, records, and other material that are both necessary and helpful for the commission to achieve the purposes of [sections 1 through 6], including records and other material concerning past, current, and potential provider services, costs, and reimbursement. In providing and considering those records and materials, the department and the commission shall make whatever changes in provider or consumer information that are necessary to comply with lawful requirements for the privacy of the service providers and consumers.

Section 6. Commission findings, recommendations, and reports.

The commission shall:

(1) make recommendations and reports concerning its activities and the results of its review to the director at those times as the commission determines; and

(2) make findings and recommendations and prepare a report to the legislature, in the manner provided in 5-11-210, on the subjects of its review.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 6].

Approved April 28, 2005

CHAPTER NO. 521

[HB 747]

AN ACT LIMITING SCHOOL DISTRICT AND PUBLIC POSTSECONDARY INSTITUTION LIABILITY FOR CIVIL DAMAGES RESULTING FROM STUDENT LABOR ON A CONSTRUCTION PROJECT AS PART OF A PUBLIC EDUCATION PROGRAM IF NOTICE OF THE STUDENT LABOR IS GIVEN AT THE TIME OF TRANSFER OF THE PROPERTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Student construction project — disclosure — immunity.

(1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, "public education program" means a program operated by a public school or a public postsecondary institution.

Section 2. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 1, and the provisions of Title 20, chapter 6, part 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] is made.

Approved April 28, 2005

CHAPTER NO. 522

[HB 748]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR STATE MATCHING FUNDS FOR FEDERAL WATER RESOURCE PROJECTS; PROVIDING FOR DEBT SERVICE PAYMENTS FROM AVAILABLE AMOUNTS IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of bond proceeds. The amount of \$5 million is appropriated from the proceeds of the bonds authorized by [section 2] to the department of natural resources and conservation to be used for state matching funds for the north central regional water authority and the dry prairie regional water authority, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners.

Section 2. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$5 million to be used for state matching funds for the federal water resource projects described in [section 1] over and above the amount of general obligation bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

Section 3. Payment of debt service. It is the intent of the legislature to annually pay principal of and interest or premiums, if any, on the bonds authorized by [section 2] from any available funds in the treasure state endowment regional water system special revenue account established in

90-6-715. Funds in the treasure state endowment regional water system special revenue account may be used each fiscal year to pay debt service on the bonds in that fiscal year to the extent that funds in the account are then available. Subject to the limitations of 90-6-715, funds in the treasure state endowment regional water system special revenue account are subject to appropriation for other purposes that the legislature considers appropriate and are not reserved to pay debt service on the bonds authorized by [section 2].

Section 4. Agreement with department of natural resources and conservation. The board of examiners and the department of natural resources and conservation may enter into an agreement for the match to federal construction funds for the purpose of regional water projects, under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the state treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for a match to federal construction funds for the purpose of regional water projects may be credited against the department's payment obligation. Payment by the department must be made from available funds.

Section 5. Legislative consent. The appropriation authorized in [section 1] constitutes legislative consent for the projects contained in [section 1] within the meaning of 18-2-102.

Section 6. Requirement for approval of state debt. Because [section 2] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 2]. If [section 2] is not approved by the required vote, [this act] is void.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 523

[HB 749]

AN ACT INCREASING, IN BOTH FISCAL YEAR 2006 AND FISCAL YEAR 2007, THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-60-102, MCA, is amended to read:

"15-60-102. (Temporary) Utilization fee for bed days in nursing facilities. (1) A nursing facility in the state shall pay to the department a utilization fee for each bed day in the facility in the following amounts:

(a) in the amount of \$2.80, which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount;

(b) in fiscal year ~~2004~~ 2006, an additional amount of ~~\$1.70~~ \$4.25 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in 15-60-211; and

(c) beginning July 1, ~~2004~~ 2006, an additional amount of ~~\$2.50~~ \$5.50 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in 15-60-211.

(2) The fees collected must be deposited as follows:

(a) the amounts collected as provided in subsection (1)(a), in the general fund; and

(b) the amounts collected as provided in subsections (1)(b) and (1)(c), in the account in the state special revenue fund as provided in 15-60-211.

(3) A nursing facility may not place a fee created in this section on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)”

Section 2. Appropriation. (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund provided in 15-60-211 to fund increases in medicaid payments to nursing facilities:

Fiscal Year 2006

State special revenue fund	\$3,500,000
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Fiscal Year 2007

State special revenue fund	\$6,000,000
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(2) The following money is appropriated to the department of public health and human services for increases in medicaid payments to nursing facilities:

Fiscal year 2006

Federal special revenue fund	\$8,449,471
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Fiscal year 2007

Federal special revenue fund	\$14,053,476
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Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 524

[HB 756]

AN ACT ENCOURAGING THE PRODUCTION AND USE OF BIODIESEL THROUGH TAX INCENTIVES; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO CRUSH OILSEED CROPS FOR PURPOSES OF BIODIESEL PRODUCTION; PROVIDING A TAX CREDIT TO A FACILITY PRODUCING BIODIESEL BASED UPON THE COST OF CONSTRUCTING AND EQUIPPING THE FACILITY; PROVIDING A TAX INCENTIVE FOR THE PRODUCTION OF BIODIESEL BASED UPON GALLONS OF PRODUCTION; PROVIDING THAT THE TAX INCENTIVE BE PAID OUT OF THE GENERAL FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Oilseed crush facility — tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in

15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property in Montana to crush oilseed crops for purposes of biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the property, up to a total of \$500,000 for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to crush oilseed:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person have an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been processing oilseed or manufacturing a product from oilseed during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility in which property is installed and for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

Section 2. Biodiesel production facility tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of constructing and equipping a facility in Montana to be used for biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the tax year in which the facility begins production.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to manufacture biodiesel:

(a) The investment must be for depreciable property used primarily to manufacture biodiesel and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel.

(ii) If more than one person have an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been manufacturing biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

Section 3. Biodiesel production incentive — appropriation. (1) (a) There is a tax incentive payable to biodiesel producers for increases in annual production the first 3 years of production. The tax incentive under this section applies to biodiesel upon which the tax has been paid under 15-70-343 by a licensed distributor. For the purposes of this section, the production year is the period from July 1 of the current year to June 30 of the succeeding year.

(b) Payments made by the department are statutorily appropriated, as provided in 17-7-502, from the state general fund.

(2) Except as provided in subsection (3), the tax incentive on each gallon of increased biodiesel production over the previous year, in accordance with subsection (1), is 10 cents a gallon for each gallon of increased production. Beginning July 1, 2010, there is no tax incentive.

(3) The tax incentive in subsection (2) may be claimed for:

- (a) the first year's total production;
- (b) the production in the second year that exceeds production in the first year; and
- (c) the production in the third year that exceeds production in the second year.

(4) After the department has verified production, the department shall begin payments of the biodiesel tax incentives based on actual production according to the terms of subsection (3).

(5) As used in this section, "biodiesel producer" means a person who engages in the business of producing, refining, or manufacturing in Montana biodiesel for sale, use, or distribution.

(6) The department shall adopt rules necessary to carry out the provisions of this section.

Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; *[section 3]*; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to

pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 5. Coordination instruction. If House Bill No. 776 is not passed and approved, the definition of "biodiesel" in 15-70-301 must read as follows:

"(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-100".

Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [section 3].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 525

[HB 776]

AN ACT PROVIDING TAX INCENTIVES FOR BIODIESEL FUEL; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO BLEND BIODIESEL MADE FROM MONTANA PRODUCTS WITH DIESEL; PROVIDING FOR THE RECAPTURE OF THE CREDIT UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF TAX CREDITS CLAIMED; PROVIDING A TAX REFUND TO DISTRIBUTORS AND OWNERS OR OPERATORS OF MOTOR FUEL OUTLETS FOR SPECIAL FUEL TAXES PAID ON BIODIESEL; PROVIDING THAT THE SPECIAL FUEL TAX REFUNDS BE REIMBURSED FROM THE STATE GENERAL FUND; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF REFUNDS CLAIMED; ELIMINATING THE PROVISION TAXING BIODIESEL AT 85 PERCENT OF THE SPECIAL FUEL TAX RATE; REMOVING THE REQUIREMENT THAT TAX LABELS BE PLACED ON BIODIESEL PUMPS; PROVIDING A STATUTORY APPROPRIATION;

AMENDING SECTIONS 15-70-301, 15-70-304, 15-70-341, AND 17-7-502, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-370, MCA, AND SECTIONS 7 AND 9, CHAPTER 568, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Biodiesel blending and storage tax credit — recapture — report to interim committee. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of storage and blending equipment to be used for blending biodiesel with petroleum diesel.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of installing storage and blending equipment only in the year in which the taxpayer begins blending biodiesel fuel.

(3) (a) The amount of the credit that may be claimed by a distributor under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed \$52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.

(b) The amount of the credit that may be claimed by an owner or operator of a motor fuel outlet under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed \$7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.

(4) The following requirements must be met in order to be entitled to a tax credit for investment in property to blend biodiesel:

(a) The investment must be for depreciable property used primarily to blend biodiesel made entirely from Montana-produced ingredients with petroleum diesel.

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the tax year in which the credit is claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax

liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) Beginning after January 1, 2006, the department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit.

Section 2. Refund for taxes paid on biodiesel by distributor or retailer — statement — payment — appropriation — records — report to interim committee. (1) A licensed distributor who pays the special fuel tax under 15-70-343 on biodiesel, as defined in 15-70-301, may claim a refund equal to 2 cents a gallon of biodiesel sold during the previous calendar quarter if the biodiesel is produced entirely from biodiesel ingredients produced in Montana.

(2) The owner or operator of a retail motor fuel outlet may claim a refund equal to 1 cent a gallon of biodiesel on which the special fuel tax has been paid purchased from a licensed distributor if the biodiesel is produced entirely from biodiesel ingredients produced in Montana.

(3) (a) To receive the refund allowed under subsection (1) or (2), the licensed distributor or the owner or operator of a motor fuel outlet shall file a statement within 30 days after the end of each calendar quarter on a form provided by the department.

(b) The statement provided by a licensed distributor must set forth information required by the department, including the gallons of biodiesel sold and the source of ingredients used to produce biodiesel.

(c) The statement provided by the owner or operator of a retail motor fuel outlet must set forth information required by the department, including the gallons of biodiesel purchased.

(4) The payment of the refund allowed by this section must be made by the department within 90 days after the claim for a refund is filed by the licensed distributor or the owner or operator of a retail motor fuel outlet. Tax refund payments under this section are statutorily appropriated, as provided in 17-7-502, from the state general fund.

(5) The records of each licensed distributor or owner or operator of a retail motor fuel outlet must be kept for a period of not more than 3 years and must include receipts, invoices, and other information as the department may require.

(6) The department or its authorized representative may examine the books, papers, or records of any licensed distributor or owner or operator of a retail motor fuel outlet.

(7) The department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the refund under this section, the total amount of the refund claimed, and the department's cost associated with administering the refund.

Section 3. Section 15-70-301, MCA, is amended to read:

~~“15-70-301. (Temporary) Definitions.~~ As used in this part, the following definitions apply:

(1) ~~“Agricultural use” means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.~~

(2) ~~“Bond” means:~~

(a) ~~a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or~~

(b) ~~a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

(3) ~~“Bulk delivery” means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.~~

(4) ~~“Cardtrol” or “keylock” means a unique device intended to allow access to a special fuel dealer’s unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.~~

(5) ~~“Department” means the department of transportation.~~

(6) (a) ~~“Distributed” means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:~~

(i) ~~special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;~~

(ii) ~~special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or~~

(iii) ~~special fuel imported into this state and placed in storage at a refinery or pipeline terminal.~~

(b) ~~When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor’s license.~~

(c) ~~Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(7) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;~~

~~(b) an importer who imports special fuel for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and~~

~~(d) an exporter.~~

~~(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.~~

~~(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.~~

~~(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.~~

~~(12) "Improperly imported fuel" means special fuel that is:~~

~~(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or~~

~~(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.~~

~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.~~

~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:~~

~~(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;~~

~~(b) dedicated to public use;~~

~~(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or~~

~~(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.~~

~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I.~~

~~(American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.~~

~~(17) "Special fuel dealer" means:~~

~~(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;~~

~~(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or~~

~~(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.~~

~~(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.~~

~~(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.~~

~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.~~

15-70-301. (Effective on occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) (a) "Biodiesel" means:

~~(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or~~

~~(ii) a monoalkyl ester that:~~

~~(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and~~

~~(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.~~

(b) Biodiesel is also known as "~~B-20~~" "*B-100*".

(3) *"Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.*

~~(3)~~(4) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(4)~~(5) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(5)~~(6) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(6)~~(7) "Department" means the department of transportation.

~~(7)~~(8) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(8)~~(9) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

~~(9)~~(10) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(10)~~(11) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(11)~~(12) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(12)~~(13) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(13)~~(14) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)~~(15) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(15)~~(16) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(16)~~(17) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

~~(17)~~(18) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(18)~~(19) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(19)(20)~~ (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

~~(20)(21)~~ "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions. As used in this part, the following definitions apply:

~~(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Bond" means:~~

~~(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or~~

~~(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.~~

~~(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.~~

~~(5) "Department" means the department of transportation.~~

~~(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:~~

~~(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;~~

~~(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or~~

~~(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.~~

~~(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(7) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;~~

~~(b) an importer who imports special fuel for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and~~

~~(d) an exporter.~~

~~(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.~~

~~(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.~~

~~(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.~~

~~(12) "Improperly imported fuel" means special fuel that is:~~

~~(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or~~

~~(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.~~

~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.~~

~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:~~

~~(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;~~

~~(b) dedicated to public use;~~

~~(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or~~

~~(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.~~

~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.~~

~~(17) "Special fuel dealer" means:~~

~~(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;~~

~~(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or~~

~~(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.~~

~~(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.~~

~~(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.~~

~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."~~

Section 4. Section 15-70-304, MCA, is amended to read:

"15-70-304. (Temporary) Bonding, release of surety, and additional bond. (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but

~~this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.~~

~~(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.~~

15-70-304. ~~(Effective on occurrence of contingency) Bonding, release of surety, and additional bond.~~ (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; ~~however~~ *However*, the total amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(3)~~(4), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(3)~~(4) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate.

Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—see. 13, Ch. 568, L. 2001.)~~

~~**15-70-304. (Effective July 1 of fourth year following date of occurrence of contingency) Bonding, release of surety, and additional bond.**~~ (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) ~~\$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and~~

(b) ~~\$500 for any other special fuel user who:~~

(i) ~~requests a special fuel user's permit to be reissued after being canceled for cause; or~~

(ii) ~~fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.~~

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.

(4) ~~The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit."~~

Section 5. Section 15-70-341, MCA, is amended to read:

~~**"15-70-341. (Temporary) License and security of special fuel distributors — denial or revocation of license — reissuance fee.**~~ (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

~~(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and~~

~~(ii) security with the department in an amount to be determined by the department.~~

~~(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.~~

~~(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.~~

~~(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.~~

~~(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:~~

~~(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;~~

~~(b) fails to provide the security required by the department;~~

~~(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;~~

~~(d) is not in compliance with motor fuels laws in other jurisdictions; or~~

~~(e) fails to pay the special fuel license tax.~~

~~(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.~~

~~(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.~~

~~(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.~~

~~(6) As used in this section, "security" means:~~

~~(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or~~

~~(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or~~

~~(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.~~

15-70-341. ~~(Effective on occurrence of contingency)~~ License and security of special fuel distributors — denial or revocation of license — reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy ~~preblended biodiesel fuel on which the tax has been paid. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15-70-341. (Effective July 1 of fourth year following date of occurrence of contingency) License and security of special fuel distributors — denial or revocation of license — reissuance fee.~~ (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section."

Section 6. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; *[section 2]*; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 7. Section 12, Chapter 568, Laws of 2001, is amended to read:

“Section 12. Contingent effective date. ~~[This act]~~ *is [Sections 1 through 4] are* effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20

million on June 30 following the date on which the condition in subsection (1) is complied with.”

Section 8. Section 13, Chapter 568, Laws of 2001, is amended to read:

“**Section 13. Contingent termination.** ~~[This act] terminates~~ *[Sections 1 through 4] terminate* June 30 of the fourth year following [the effective date of this act].”

Section 9. Repealer. Section 15-70-370, MCA, and sections 7 and 9, Chapter 568, Laws of 2001, are repealed.

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 2].

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

(2) [Section 2] applies to biodiesel blend distributed or purchased in calendar quarters beginning after June 30, 2005.

Approved April 28, 2005

CHAPTER NO. 526

[HB 782]

AN ACT PROVIDING THAT ISSUE REMARKS MUST BE FINALLY RESOLVED BEFORE ISSUANCE OF A FINAL DECREE; PROVIDING THAT THE ATTORNEY GENERAL MAY INTERVENE IN THE PROCEEDINGS BEFORE THE WATER COURT ON ISSUE REMARKS THAT HAVE NOT BEEN OTHERWISE RESOLVED; PROVIDING THAT ISSUE REMARKS ARE EVIDENCE TO BE WEIGHED AGAINST THE PRIMA FACIE STATUS OF A WATER RIGHT CLAIM; PROVIDING THAT RESOLVING OBJECTIONS IS OF HIGHER IMPORTANCE THAN RESOLVING ISSUE REMARKS UNLESS OTHERWISE DETERMINED BY THE CHIEF WATER JUDGE; AMENDING SECTIONS 85-2-232, 85-2-233, 85-2-234, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. (1) Because the state of Montana is the owner of all water in the state, pursuant to Article IX, section 3, of the Montana constitution, the legislature recognizes that it is in the state’s best interest to ensure that valid issues raised as a result of claims examination in the statewide adjudication of pre-July 1, 1973, water rights are resolved before a final decree is issued.

(2) If as a result of the examination or the prior verification conducted by the department an issue remark is attached to a claim, the information resulting in the issue remark and the issue remark must be weighed against the claimed water right.

Section 2. Resolution of issue remarks other than by objection. (1) In resolving issue remarks other than through the objection process provided for in 85-2-233, the water court shall proceed as provided in this section.

(2) All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.

(3) The water court shall review each factual or legal issue remark not resolved as a result of the filing of an objection to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error.

(4) If an issue remark cannot be resolved pursuant to subsection (3), the water court shall notify the claimant in writing that each factual or legal issue remark must be resolved as provided in this section.

(5) (a) The water court shall require the claimant to confer with the department in an informal effort to resolve any identified issue remarks.

(b) If an issue remark is resolved to the satisfaction of the department and the claimant, the claimant, with the assistance of the department, shall prepare and file any documents that are needed to support the resolution. The department shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.

(c) If an issue remark is not resolved, the department shall file a notice with the water court informing the water court that the issue remark was not resolved.

(6) The water court shall schedule proceedings to resolve all issue remarks that remain unresolved pursuant to subsections (2) through (5). All proceedings must include the department pursuant to 85-2-243 and any parties appearing in opposition to the claim, including the attorney general if the attorney general has intervened.

(7) (a) If an unresolved issue remark involves nonperfection or abandonment, the water court shall join the state of Montana through the attorney general as a necessary party to resolve the issue remark. The water court shall notify the attorney general of the joinder.

(b) Except as provided in subsection (7)(a), for any claim containing an issue remark that has not been resolved pursuant to subsections (2) through (5), the attorney general may intervene as a matter of right.

(c) The attorney general may adopt rules to implement the responsibilities and duties of the attorney general imposed by this section.

(8) The water court shall hold an evidentiary hearing on any issue remark that remains unresolved pursuant to subsections (2) through (7).

(9) If a claimant fails to appear at a scheduled evidentiary hearing or fails to comply with an order issued by the water court in its review of issue remarks, the water court, upon motion or its own initiative, may, in its ruling:

(a) amend the elements of the claim to conform with the information in the claim file;

(b) amend the elements in the claim to conform with information obtained by the court;

(c) remove the issue remark; or

(d) terminate the claim.

(10) Following the conclusion of the evidentiary hearing and the expiration of any posthearing briefing schedule, the water court shall render its written decision.

(11) Any proposal by the claimant to resolve an issue remark without an evidentiary hearing must be in writing, signed by each owner of the claim at issue, and filed with the water court with any supporting documentation.

(12) The water court's decision on each issue remark that it reviews pursuant to this section must be documented in a master's report or water judge's order. The water court shall modify the abstract of each claim in accordance with its written decision and remove any applicable issue remark.

Section 3. Prioritization of workload. The chief water judge may place a higher priority on hearing objections to claims in a basin than on resolving issue remarks.

Section 4. Definition. For the purposes of [sections 1 through 3] "issue remark" means a statement added to an abstract of water right in a water court decree by the department or the water court to identify potential factual or legal issues associated with the claim. The term also includes "gray area remarks" that were the result of the verification process.

Section 5. Section 85-2-232, MCA, is amended to read:

"85-2-232. Availability of temporary preliminary or preliminary decree. (1) (a) The water judge shall send to the department a copy of a temporary preliminary decree or preliminary decree issued for a basin.

(b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to that person's successor as documented in the department's records.

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin.

(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person or to that person's successor as documented in the department's records, who has filed a declaration of an existing right.

(e) The water judge shall enclose with a notice required under subsections (1)(b) through (1)(d) an abstract of the disposition of the claimed or declared existing right of a person identified in this section or that person's successor as documented in the department's records.

(f) The notice of availability required under this section must also be served upon:

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3;

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316; or

(iii) other interested persons who request service of the notice from the water judge.

(g) *When the water court provides notice to claimants of the opportunity to object, it shall include information explaining the right to appeal a water court decision as provided in 85-2-235.*

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary decree. The certificate is conclusive evidence of legal notice of entry of decree.

(3) Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

(4) A person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge. The fee must be deposited in the state general fund."

Section 6. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on temporary preliminary decree or preliminary decree — procedure. (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

- (i) the department;
 - (ii) a person named in the temporary preliminary decree or preliminary decree;
 - (iii) any person within the basin entitled to receive notice under 85-2-232(1);
- or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is allowed for any of the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
- (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- (iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records *and shall notify the attorney general* that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed

objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

(11) (a) *All issue remarks, as defined in [section 4], must be finally resolved before the issuance of a final decree.*

Section 7. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree, ~~and on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in [section 4],~~ enter a final decree affirming or modifying the preliminary decree. ~~If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.~~

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;
 - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
 - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 8. Section 85-2-235, MCA, is amended to read:

“85-2-235. Appeals. (1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if:

(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; ~~or~~

(b) the person’s rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person;

(c) *the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in [section 4]; or*

(d) *the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court’s own motion.*

(2) *The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in [section 2].*

(2)(3) An interlocutory ruling by the water judge upon a question of law may be appealed by any party *who is* affected by the decision and who participated in the matter in which the ruling was issued.”

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 4].

Section 10. Coordination instruction. If House Bill No. 22 is not passed and approved, [this act] is void.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 527

[HB 790]

AN ACT REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT A STUDY ON SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING; PROVIDING FOR A SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL; PROVIDING THAT THE SUBCOMMITTEE SHALL, IF APPROPRIATE, SEPARATE THE STUDY INTO TWO STUDIES; PROVIDING FOR AT-LARGE MEMBERS ON THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-5-211 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim study on split estates of mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding. (1) The environmental quality council provided for in Title 5, chapter 16, shall conduct an interim study on:

(a) split estates with regard to the ownership of minerals and the ownership of surface property related to oil and gas development;

(b) reclamation of surface property affected by coal bed methane development; and

(c) bonding requirements for coal bed methane production.

(2) (a) The environmental quality council shall establish a subcommittee to conduct the study and report back to the full council. The subcommittee members must be appointed by the chair of the environmental quality council with concurrence of the vice chair. The subcommittee must include:

(i) four members, two from each political party, who are legislators appointed to the environmental quality council;

(ii) two members who are public members of the environmental quality council; and

(iii) six at-large members who may be members of the legislature or the public and who are not currently serving on the environmental quality council.

(b) All of the members of the subcommittee have voting privileges on issues taken up by the subcommittee. The six at-large members provided for in subsection (2)(a)(iii) do not have voting privileges on the full environmental quality council. Any final recommendations and other work products that will be represented as being produced or endorsed by the environmental quality council must be finally approved by the environmental quality council.

(c) The at-large members provided for in subsection (2)(a)(iii) are entitled to the same compensation allowed for other members of the environmental quality council.

(3) The portion of the study addressing split estates must include but is not limited to:

(a) procedures and timelines for giving notice to surface owners;

(b) minimum provisions for surface use agreements;

(c) elements that should be considered in surface use agreements, including but not limited to road development, onsite water impoundments, and the quality and disposal of produced water;

(d) provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner; and

(e) bonding requirements, if any, based on the type of activity.

(4) The portion of the study specifically addressing reclamation and bonding for coal bed methane operations must include but is not limited to:

(a) assessing current requirements for reclamation and bonding for coal bed methane operations and determining if they are adequate;

(b) evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;

(c) exploring alternatives and approaches for balancing mineral rights with surface rights;

(d) identifying the relationship between federal law and state law with regard to split estates and jurisdiction; and

(e) evaluating the necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments.

(5) The subcommittee shall, if appropriate, divide the issues into two separate studies.

(6) The environmental quality council shall complete the study by September 15, 2006, and report to the 60th legislature on its findings and recommendations, including any recommendations for legislation.

Section 2. Section 5-5-211, MCA, is amended to read:

“5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to subsection (5)(b), the composition of each interim committee must be as follows:

(i) four members of the house, no more than two of whom may be of one political party; and

(ii) four members of the senate, no more than two of whom may be of one political party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from each political party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee *or the environmental quality council* may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.”

Section 3. Section 15-36-331, MCA, is amended to read:

“15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) ~~The~~ (a) *Except as provided in subsection (2)(b),* the amount of oil and natural gas production taxes collected for the privilege and license tax pursuant

to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) *In the 2007 biennium, up to \$50,000 may be allocated to the legislative services division for the purpose of a study of split estates of property between mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding.*

(3) (a) For ~~tax year 2003 and succeeding~~ *each tax years year*, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	~~45.03%~~	~~45.04%~~	45.04%	45.05%
Blaine	~~57.56%~~	~~57.84%~~	58.11%	58.39%
Carbon	~~50.24%~~	~~49.59%~~	48.93%	48.27%
Chouteau	~~56.67%~~	~~57.16%~~	57.65%	58.14%
Custer	~~103.63%~~	~~92.27%~~	80.9%	69.53%
Daniels	~~48.31%~~	~~49.15%~~	49.98%	50.81%
Dawson	~~56.32%~~	~~53.48%~~	50.64%	47.79%
Fallon	~~39.89%~~	~~40.52%~~	41.15%	41.78%
Fergus	~~112.2%~~	~~97.86%~~	83.52%	69.18%
Garfield	~~54.51%~~	~~51.66%~~	48.81%	45.96%
Glacier	~~76.56%~~	~~70.65%~~	64.74%	58.83%
Golden Valley	~~55.5%~~	~~56.45%~~	57.41%	58.37%
Hill	~~66.97%~~	~~66.15%~~	65.33%	64.51%
Liberty	~~63.32%~~	~~61.53%~~	59.73%	57.94%
McCone	~~58.75%~~	~~55.81%~~	52.86%	49.92%
Musselshell	~~57.06%~~	~~54.25%~~	51.44%	48.64%
Petroleum	~~67.8%~~	~~61.21%~~	54.62%	48.04%
Phillips	~~53.3%~~	~~53.54%~~	53.78%	54.02%
Pondera	~~104.14%~~	~~87.51%~~	70.89%	54.26%
Powder River	~~64.7%~~	~~63.44%~~	62.17%	60.9%
Prairie	~~38.43%~~	~~39.08%~~	39.73%	40.38%
Richland	~~45.23%~~	~~45.97%~~	46.72%	47.47%
Roosevelt	~~46.75%~~	~~46.4%~~	46.06%	45.71%
Rosebud	~~37.41%~~	~~38.05%~~	38.69%	39.33%
Sheridan	~~46.64%~~	~~47.09%~~	47.54%	47.99%
Stillwater	~~56.05%~~	~~55.2%~~	54.35%	53.51%
Sweet Grass	~~58.23%~~	~~59.24%~~	60.24%	61.24%

Teton	~~53.01%~~	~~50.71%~~	48.4%	46.1%
Toole	~~56.2%~~	~~56.67%~~	57.14%	57.61%
Valley	~~59.82%~~	~~57.02%~~	54.22%	51.43%
Wibaux	~~47.71%~~	~~48.19%~~	48.68%	49.16%
Yellowstone	~~50.69%~~	~~49.37%~~	48.06%	46.74%
All other counties	~~50.15%~~	~~50.15%~~	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

- ~~(a) for the fiscal year ending June 30, 2003, to be distributed as follows:~~
- ~~(i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~
- ~~(ii) all remaining proceeds to the state general fund;~~
- ~~(b)(a) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be distributed as follows:~~
 - (i) 1.23% to the coal bed methane protection account established in 76-15-904;
 - (ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;
 - (iii) 2.95% to the orphan share account established in 75-10-743;
 - (iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and
- ~~(v)(v) all remaining proceeds to the state general fund;~~
- ~~(c)(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:~~
 - (i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;
 - (ii) 2.95% to the orphan share account established in 75-10-743;
 - (iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and
 - (iv) all remaining proceeds to the state general fund."

Section 4. Appropriation. The \$50,000 allocated to the legislative services division in 15-36-331 is appropriated to the legislative services division from the state special revenue fund for use by the environmental quality council for the purposes provided in [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [Section 3] terminates September 15, 2006.

Approved April 28, 2005

CHAPTER NO. 528

[HB 802]

AN ACT ELIMINATING THE ANNUAL PERMIT SURCHARGE FEE FOR VIDEO GAMBLING MACHINES; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-612, MCA, is amended to read:

“23-5-612. Machine permits — fees. (1) The department, upon payment by the operator of the ~~fees~~ fee provided in ~~subsections subsection (2) and (4)~~ and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of \$220 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator’s license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator’s license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit \$120 of the annual permit fee or for a prorated fee shall deposit \$90 for three quarters, \$60 for two quarters, and \$30 for one quarter collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

~~(4) (a) In addition to the annual permit fee charged under subsection (2), the department shall charge a \$10 annual permit surcharge fee for each video gambling machine that is on a licensed premises having fewer than 20 machines and a \$20 annual permit surcharge fee for each machine that is on a licensed premises having 20 machines. The annual permit surcharge fee must be prorated as provided in subsection (2)(a).~~

~~(b) The annual permit surcharge fee charged under subsection (4)(a) must be deposited in the state general fund.”~~

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to permit fees charged on or after June 30, 2005.

Approved April 28, 2005

CHAPTER NO. 529

[SB 40]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION CONTAINING THE CONSENT OF ALL OWNERS OF PROPERTY TO BE INCLUDED IN THE DISTRICT; EXEMPTING THE RESOLUTION OF INTENTION TO CREATE THE DISTRICT AND THE RESOLUTION TO CREATE THE DISTRICT FROM NOTICE, HEARING, AND PROTEST PROVISIONS IF CREATION OF THE DISTRICT IS THE RESULT OF THE PETITION; AND AMENDING SECTIONS 7-12-2102, 7-12-2105, 7-12-2109, AND 7-12-2113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2102, MCA, is amended to read:

“7-12-2102. Authorization to create rural improvement districts — property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners ~~is hereby authorized and empowered to~~ may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) *The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.*

(2)(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may not be included in the rural special improvement district if 40% of those property owners protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) *The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2).*

Section 3. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district — exception. (1) ~~At~~ *Except as provided in subsection (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.*

(2) *The provisions of subsection (1) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2).*

~~(2)~~(3) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 4. Section 7-12-2113, MCA, is amended to read:

“7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~thereof~~ *introduced and passed by the board.*

(2) ~~The board shall be deemed~~ *is considered* to have acquired jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when no protests have been delivered to the county clerk within ~~15~~ 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest ~~shall have~~ *has* been found by ~~said the~~ board to be insufficient or ~~shall have~~ *has* been overruled; ~~or~~

(c) when a protest against the extending of the proposed district ~~shall have~~ *has* been heard and denied; *or*

(d) *when a resolution creating the district is passed upon receipt of a petition as provided in 7-12-2102(2).*"

Approved April 28, 2005

CHAPTER NO. 530

[SB 41]

AN ACT INCORPORATING FUNDING PRINCIPLES FOR THE PURPOSES OF THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTIONS 53-6-101 AND 53-21-139, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of ~~public health and human services~~ shall administer the Montana medicaid program.

(2) *The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:*

(a) *protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;*

(b) *giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and*

(c) *giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.*

~~(2)~~(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

~~(3)~~(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (b) home health care services;
- (c) private-duty nursing services;
- (d) dental services;
- (e) physical therapy services;
- (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
- (g) clinical social worker services;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
- (o) services of psychologists licensed under Title 37, chapter 17;
- (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
- (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

~~(4)~~(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in

amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections ~~(2)~~ (3) and ~~(3)~~ (4) to persons qualifying for medicaid under the medically needy category of assistance.

~~(5)~~(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(t)~~ (3)(l) but may include those optional services listed in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(q)~~ (4)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

~~(6)~~(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

~~(7)~~(8) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

~~(8)~~(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

~~(9)~~(10) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

~~(10)~~(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

~~(11)~~(12) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program *after taking into consideration the funding principles set forth in subsection (2)*.

~~(12)~~(13) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

~~(13)~~(14) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 2. Section 53-21-139, MCA, is amended to read:

“53-21-139. Crisis intervention programs. (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101~~(3)(j)~~(4)(j); and

(b) a targeted case management service authorized in 53-6-101~~(3)(n)~~(4)(n).”

Approved April 28, 2005

CHAPTER NO. 531

[SB 48]

AN ACT REMOVING THE CLASS EIGHT PROPERTY TAX PROVISION THAT WOULD HAVE PHASED OUT THE TAXATION OF CLASS EIGHT PROPERTY CONTINGENT ON A CERTAIN INCREASE IN STATE WAGES AND SALARIES; INCREASING THE CAP ON THE EXEMPT AGGREGATE MARKET VALUE OF CLASS EIGHT PROPERTY FROM \$5,000 TO \$20,000; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA, SECTION 27, CHAPTER 285, LAWS OF 1999, SECTION 31, CHAPTER 285, LAWS OF 1999, AND SECTION 5, CHAPTER 577, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

“15-6-138. ~~(Temporary)~~ Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and
- (n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

~~(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.~~

~~(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.~~

~~(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:~~

~~(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and~~

~~(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).~~

~~(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.~~

~~(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.~~

~~(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation.~~

(5) The class eight property of a person or business entity that owns an aggregate of \$20,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)

Section 2. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

- (a) except as provided in 15-24-1203, the property of:
 - (i) the United States, except:
 - (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or
 - (B) as provided in 15-24-1103;
 - (ii) the state, counties, cities, towns, and school districts;
 - (iii) irrigation districts organized under the laws of Montana and not operating for profit;
 - (iv) municipal corporations;
 - (v) public libraries; and
 - (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;
- (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.
- (d) property that is:
 - (i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
 - (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
 - (iii) not maintained and operated for private or corporate profit;
- (e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;
- (f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;
- (g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;
- (h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; *and*

(ee) light vehicles as defined in 61-1-139; ~~and~~

~~(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:~~

~~(i) all agricultural implements and equipment;~~

~~(ii) all mining machinery, fixtures, equipment, tools, and supplies;~~

~~(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal~~

~~injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;~~

- ~~(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;~~
- ~~(v) all goods and equipment that are intended for rent or lease;~~
- ~~(vi) special mobile equipment as defined in 61-1-104;~~
- ~~(vii) furniture, fixtures, and equipment;~~
- ~~(viii) x-ray and medical and dental equipment;~~
- ~~(ix) citizens' band radios and mobile telephones;~~
- ~~(x) radio and television broadcasting and transmitting equipment;~~
- ~~(xi) cable television systems;~~
- ~~(xii) coal and ore haulers; and~~
- ~~(xiii) theater projectors and sound equipment.~~

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) “industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) “industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.”

Section 3. Section 27, Chapter 285, Laws of 1999, is amended to read:

“**Section 27. Repealer.** ~~(1)~~ Sections 15-6-136, 15-24-901, 15-24-920, 15-24-926, 15-24-927, and 15-24-931, MCA, are repealed.

~~(2) Section 15-6-138, MCA, is repealed.”~~

Section 4. Section 31, Chapter 285, Laws of 1999, is amended to read:

“**Section 31. Effective dates.** (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

~~(4) [Sections 13(1)(aa) through (1)(ll) and 27(2)] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero.”~~

Section 5. Section 5, Chapter 577, Laws of 2003, is amended to read:

“**Section 5.** Section 31, Chapter 285, Laws of 1999, is amended to read:

“**Section 31. Effective dates.** (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

~~(4) [Sections 13(1)(aa) through (1)(ll) and 27(2)] are [Section 27(2)] is effective if the tax rate in [section 12], amending 15-6-138, reaches zero.”~~

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 532

[SB 68]

AN ACT GENERALLY RECODIFYING THE LAWS EXEMPTING CERTAIN PROPERTY FROM TAXATION; AND AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-6-204, 15-6-205, 15-6-207, 15-6-220, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

“15-6-134. Class four property — description — taxable percentage.

(1) Class four property includes:

(a) subject to ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to ~~15-6-201(1)(z)~~ [section 5(1)], all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, property described in subsections (1)(a), (1)(b), *and* (1)(c), ~~(1)(d), and through~~ (1)(g) of this section is taxed at:

- ~~(i) 3.40% of its taxable market value in tax year 2003;~~
- ~~(ii) 3.3% of its taxable market value in tax year 2004;~~
- ~~(iii)~~(i) 3.22% of its taxable market value in tax year 2005;
- ~~(iv)~~(ii) 3.14% of its taxable market value in tax year 2006;
- ~~(v)~~(iii) 3.07% of its taxable market value in tax year 2007; and
- ~~(vi)~~(iv) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$ 6,000	\$0 - \$8,000	20%
\$6,001 - \$9,200	\$8,001 - \$14,000	50%
\$9,201 - \$15,000	\$14,001 - \$20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under ~~15-6-201(1)(bb)~~ 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under ~~15-6-201(1)(c)~~ [section 6], and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal

injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under ~~15-6-201(1)(a)~~ [section 6], and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in ~~15-6-201~~ 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds ~~per~~ *an* axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)”

Section 3. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

~~(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;~~

~~(i) truck canopy covers or toppers and campers;~~

~~(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;~~

~~(k) motor homes;~~

~~(l) all watercraft;~~

~~(m)~~(h) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

~~(n)~~(i) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

~~(o)~~(j) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; *and*

~~(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;~~

~~(q)~~(k) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection ~~(1)(q)~~ (1)(k), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

~~(B) repair and maintain machinery, equipment, appliances, or other personal property;~~

(ii) ~~space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;~~

~~(s) harness, saddlery, and other tack equipment;~~

~~(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;~~

~~(u) timber as defined in 15-44-102;~~

~~(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;~~

~~(w) all vehicles registered under 61-3-456;~~

~~(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and~~

~~(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);~~

~~(y) motorcycles and quadricycles;~~

~~(z) the following percentage of the market value of residential property described in 15-6-134(1)(c) and (1)(f):~~

~~(i) 31% for tax year 2003;~~

~~(ii) 31.4% for tax year 2004;~~

~~(iii) 32% for tax year 2005;~~

~~(iv) 32.6% for tax year 2006;~~

~~(v) 33.2% for tax year 2007;~~

~~(vi) 34% for tax year 2008 and succeeding tax years;~~

~~(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):~~

~~(i) 13% for tax year 2003;~~

~~(ii) 13.3% for tax year 2004;~~

~~(iii) 13.8% for tax year 2005;~~

~~(iv) 14.2% for tax year 2006;~~

~~(v) 14.6% for tax year 2007;~~

~~(vi) 15% for tax year 2008 and succeeding tax years;~~

~~(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;~~

~~(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:~~

~~(i) the acquired cost of the personal property is less than \$15,000;~~

~~(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and~~

~~(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;~~

~~(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;~~

~~(ee) light vehicles as defined in 61-1-139; and~~

~~(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:~~

- ~~(i) all agricultural implements and equipment;~~
- ~~(ii) all mining machinery, fixtures, equipment, tools, and supplies;~~
- ~~(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;~~
- ~~(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;~~
- ~~(v) all goods and equipment that are intended for rent or lease;~~
- ~~(vi) special mobile equipment as defined in 61-1-104;~~
- ~~(vii) furniture, fixtures, and equipment;~~
- ~~(viii) x-ray and medical and dental equipment;~~
- ~~(ix) citizens' band radios and mobile telephones;~~
- ~~(x) radio and television broadcasting and transmitting equipment;~~
- ~~(xi) cable television systems;~~
- ~~(xii) coal and ore haulers; and~~
- ~~(xiii) theater projectors and sound equipment.~~

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an

individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display.

~~(3) For the purposes of subsection (1)(bb):~~

~~(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.~~

~~(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.~~

~~(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:~~

~~(a) \$20,000 in the case of a single-family residential dwelling;~~

~~(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."~~

Section 4. Property subject to fee in lieu of taxes. The following property that is subject to a fee in lieu of taxes is exempt from property taxation:

- (1) truck canopy covers or toppers and campers;
- (2) motor homes;
- (3) all watercraft;
- (4) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;
- (5) all vehicles registered under 61-3-456;
- (6) (a) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and
- (b) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (6)(a);
- (7) motorcycles and quadricycles; and
- (8) light vehicles as defined in 61-1-139.

Section 5. Residential and commercial improvements — percentage of value exempt. (1) The following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f) is exempt from property taxation:

- (a) 32% for tax year 2005;
- (b) 32.6% for tax year 2006;
- (c) 33.2% for tax year 2007;

(d) 34% for tax year 2008 and succeeding tax years.

(2) The following percentage of the market value of commercial property described in 15-6-134(1)(g) is exempt from property taxation:

(a) 13.8% for tax year 2005;

(b) 14.2% for tax year 2006;

(c) 14.6% for tax year 2007;

(d) 15% for tax year 2008 and succeeding tax years.

Section 6. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) harness, saddlery, and other tack equipment;

(2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(a) construct, repair, and maintain improvements to real property; or

(b) repair and maintain machinery, equipment, appliances, or other personal property;

(3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(4) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than \$15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; and

(8) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers,

gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

- (d) all manufacturing machinery, fixtures, equipment, tools, and supplies;
- (e) all goods and equipment that are intended for rent or lease;
- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers; and
- (m) theater projectors and sound equipment.

Section 7. Timber exemption. Timber, as defined in 15-44-102, is exempt from taxation.

Section 8. Section 15-6-204, MCA, is amended to read:

“15-6-204. ~~Moneys~~ Money and credits exemption. (1) ~~Moneys~~ Money and credits are exempt from taxation.

(2) ~~Moneys~~ Money and credits are, hereby defined for the purpose purposes of taxation as this section, all moneys not constituting moneyed capital as hereinafter defined money and all credits secured and unsecured, including all state, county, school district, and other municipal bonds, warrants, and securities, without any deduction or offset; provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.”

Section 9. Section 15-6-205, MCA, is amended to read:

“15-6-205. State water conservation projects exempt. All lands acquired and held by the department of natural resources and conservation or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state ~~shall be~~ are exempt from taxation, and it ~~shall be the duty of the county treasurer to~~ shall cancel all taxes remaining unpaid ~~against said~~ on the land for the year in which ~~same the~~ land is so acquired and for all previous years, provided that such. The taxes ~~shall may~~ be canceled only in such cases as if no a tax certificates certificate ~~shall have~~ has not been issued or, if a tax certificate has been issued, it was issued to the county and ~~no an~~ assignment of such the certificate of sale has not been made by ~~said the~~ county prior to the time when ~~said that the~~ land was acquired by ~~said the~~ department.”

Section 10. Section 15-6-207, MCA, is amended to read:

“15-6-207. Agricultural producer exemptions — products — unused beet equipment — low value buildings, implements, and machinery. (1) The following agricultural products are exempt from taxation:

- (a) all unprocessed agricultural products on the farm or in storage and owned by the producer;
- (b) all producer-held grain in storage;

- (c) all unprocessed agricultural products;
- (d) all livestock and the unprocessed products of livestock;
- (e) poultry and the unprocessed products of poultry;
- (f) bees and the unprocessed product of bees; and
- (g) biological control insects.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

(3) *All farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100 are exempt from taxation.*

(4) *As provided in [section 6(8)], all agricultural implements and equipment are exempt from taxation if the tax rate in 15-6-138 reaches zero."*

Section 11. Section 15-6-220, MCA, is amended to read:

"15-6-220. ~~Exemption for Agricultural processing facilities exemption — canola facilities and — malting barley facilities — industrial dairy — ethanol.~~ (1) The following property is exempt from property taxation:

(a) machinery and equipment used in a canola seed oil processing facility;
~~and~~

(b) machinery and equipment used in a malting barley facility;

(c) *personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; and*

(d) *all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility.*

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) *"Industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.*

(4) *"Industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.*

~~(3)~~(5) *"Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and*

equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.”

Section 12. Nonfossil energy generation. The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (1) \$20,000 in the case of a single-family residential dwelling;
- (2) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

Section 13. Section 15-7-102, MCA, is amended to read:

“15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) except as provided in subsection (1)(b), change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer’s informational purposes:

- (i) the total amount of mills levied against the property in the prior year; and
- (ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices

required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 14. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any

compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under ~~15-6-201(1)(z) and (1)(aa)~~ [section 5].

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town."

Section 15. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-31-124 and 15-31-125, may be claimed for the investment. Property tax reduction allowed by ~~15-6-201(4)~~ [section 12] may not be applied to a facility for which a credit is claimed pursuant to this part."

Section 16. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), ~~(1)(m)~~ (1)(h), ~~(1)(e)~~ (1)(j), or ~~(1)(q)~~ (1)(k), or ~~(1)(w)~~ [section 4(5)], 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(c) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire registration period."

Section 17. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), ~~(1)(h)~~ (1)(j), or ~~(1)(h)~~ (1)(k); and ~~(1)(v)~~ [section 4(4)] are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 18. Codification instruction. [Sections 4, 5, 6, 7, and 12] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 4, 5, 6, 7, and 12].

Section 19. Coordination instruction. If Senate Bill No. 48 is passed and approved and it removes the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries, then [section 6] of [this act] must read as follows:

"NEW SECTION. Section 6. Personal and other property exemptions. The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (a) construct, repair, and maintain improvements to real property; or
 - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
 - (a) the acquired cost of the personal property is less than \$15,000;
 - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
 - (c) the lease of the personal property is generally on an hourly, daily, or weekly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that

business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.”

Approved April 28, 2005

CHAPTER NO. 533

[SB 75]

AN ACT CLARIFYING THE PROCEDURE WHEN AN APPLICANT BEFORE A COUNTY TAX APPEAL BOARD HAS THE APPLICATION AUTOMATICALLY GRANTED BECAUSE OF THE COUNTY TAX APPEAL BOARD'S REFUSAL OR FAILURE TO HEAR THE APPEAL; PROVIDING NOTICE OF THE ACTION TO THE DEPARTMENT OF REVENUE, STATE TAX APPEAL BOARD, AND AFFECTED MUNICIPAL CORPORATIONS; AUTHORIZING AN APPEAL TO THE STATE TAX APPEAL BOARD BY THE DEPARTMENT OF REVENUE OR A MUNICIPAL CORPORATION; AND AMENDING SECTIONS 15-15-103 AND 15-15-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-103, MCA, is amended to read:

“15-15-103. Examination of applicant — failure to hear application.

(1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) (a) Except as provided in 15-15-201, if a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

~~(a)~~(i) those listed in 15-2-302; and

~~(b)(ii)~~ if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current session.

(b) The county tax appeal board shall provide written notification of each application that was automatically granted pursuant to subsection (2)(a) to the department, the state tax appeal board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property."

Section 2. Section 15-15-104, MCA, is amended to read:

"15-15-104. Appeal to state tax appeal board. (1) If the appearance provisions of 15-15-103(1) have been complied with, a person or the department ~~of revenue~~, on behalf of the state, or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

(2) If an appeal has been automatically granted by a county tax appeal board pursuant to 15-15-103(2), the department, on behalf of the state, or any municipal corporation aggrieved by the action may appeal to the state tax appeal board under 15-2-301. The time for filing an appeal commences on receipt by the department of the written notification required by 15-15-103(2)(b)."

Approved April 28, 2005

CHAPTER NO. 534

[SB 81]

AN ACT REDUCING THE NUMBER OF DAYS THAT A MEMBER OF THE MONTANA NATIONAL GUARD MUST BE ON ACTIVE DUTY BEFORE BEING ELIGIBLE FOR RELIEF UNDER THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; AMENDING SECTION 10-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-902, MCA, is amended to read:

"10-1-902. Definitions. As used in this part, the following definitions apply:

(1) "Active duty" means at least ~~30~~ 14 consecutive days of full-time state active duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 535

[SB 85]

AN ACT PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF TO FUND THE MONTANA END-STAGE RENAL DISEASE PROGRAM; ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN APPLICABILITY DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Voluntary checkoff for assistance to persons suffering from end-stage renal disease. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to a program to provide financial assistance to persons suffering from end-stage renal disease by marking the appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the Montana end-stage renal disease program. The provision must be in substantially the following form:

Montana end-stage renal disease program funding. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___\$5, ___\$10, or ___(specify an amount) to fund a program to provide financial assistance to persons suffering from end-stage renal disease. If a joint return, check the appropriate blank if your spouse wishes to contribute, in addition to your existing tax liability, ___\$5, ___\$10, or ___(specify an amount) for the same purpose.

(3) Money received under this section, after the department has deducted the administrative charge provided for in 15-30-153, must be deposited in the account established by [section 2] to provide financial assistance to persons suffering from end-stage renal disease.

Section 2. End-stage renal disease program account — administration. (1) There is an end-stage renal disease program account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under [section 1] must be deposited in the account.

(3) Money in the account must be used by the department of public health and human services for the treatment of end-stage renal disease under 50-44-102.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 50, chapter 44, part 1, and the provisions of Title 50, chapter 44, part 1, apply to [section 2].

Section 4. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Section 5. Contingent termination. The voluntary income tax checkoff created in [section 1] terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than \$10,000 in each of those 2 tax years.

Approved April 28, 2005

CHAPTER NO. 536

[SB 87]

AN ACT CLARIFYING THAT PROPERTY TAXES OR FEES ON CENTRALLY ASSESSED PROPERTY MUST BE PAID UNDER PROTEST IN ORDER FOR THE TAXPAYER TO RECEIVE A REFUND OR CREDIT OF THE PROPERTY TAXES; REQUIRING THAT THE PROTESTED PAYMENT BE REPORTED TO THE DEPARTMENT OF REVENUE; ESTABLISHING A CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND FOR THE DEPOSIT OF 50 PERCENT OF THE PROTESTED STATE PROPERTY TAXES HELD IN RESERVE; PROVIDING THAT THE DEPARTMENT OF REVENUE AND NOT THE STATE TREASURER RECEIVE AND DISBURSE PROTESTED PROPERTY TAX PAYMENTS; PROVIDING FOR THE DISBURSEMENT OF FUNDS UPON COMPLETION OF A PROTEST ACTION; TRANSFERRING FROM THE GENERAL FUND TO THE CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND 50 PERCENT OF THE MONEY RECEIVED BY THE DEPARTMENT OF REVENUE FROM PAYMENTS OF PROPERTY TAXES OR FEES UNDER PROTEST; AMENDING SECTIONS 15-1-402 AND 15-23-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

~~(a)~~(i) be made to the officer designated and authorized to collect it;

~~(b)~~(ii) specify the grounds of protest; and

~~(c)~~(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) *If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.*

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent

installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the ~~state treasurer department~~.

(ii) ~~The state treasurer department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund.~~

(iii) ~~The Fifty percent remainder of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.~~

(5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount

of the protested portions of the property tax or fee must be taken from the protest fund *or the centrally assessed property tax state special revenue fund* and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the ~~state treasurer~~ *department* shall refund *from the centrally assessed property tax state special revenue fund* the amount of protested taxes and *from the state general fund* the amount of interest as required in subsection (6)(b). *The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to [the effective date of this act], an equivalent amount of the money transferred to the fund pursuant to [section 3]. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-107.*

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."

Section 2. Section 15-23-116, MCA, is amended to read:

"15-23-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) *Except as provided in subsection (3), a refund or credit may not be allowed or paid unless the taxpayer has paid the tax under protest as provided by 15-1-402.*

~~(3) No refund or credit may be allowed or paid with respect to the year for which a return is filed after If the department determines that the taxpayer has made an overpayment, the department shall refund or credit the overpayment if the overpayment was discovered within 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.~~

~~(3)~~(4) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department."

Section 3. Fund transfer. Fifty percent of the property tax or fee protest money held pursuant to 15-1-402(4)(b) on [the effective date of this act], but not more than \$4 million for protested taxes deposited in the state general fund, is transferred to the centrally assessed property tax state special revenue fund from the state general fund and from funds in the state special revenue fund levied pursuant to 15-10-107.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 537

[SB 133]

AN ACT CREATING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; PROVIDING CONTINGENT, DEFERRED TAX CREDITS TO INVESTORS OR THEIR ASSIGNEES; ESTABLISHING AND PROVIDING THE DUTIES OF A MONTANA EQUITY CAPITAL INVESTMENT BOARD; PROVIDING FOR PRIVATE SECTOR ORGANIZATION AND MANAGEMENT OF THE MONTANA EQUITY FUND; PROVIDING FOR REGISTRATION AND VERIFICATION OF TAX CREDIT USE OR TRANSFER; REQUIRING AN ANNUAL FEE FOR THE DESIGNATED INVESTOR GROUP; SETTING TERMS FOR TAX CREDIT REDEMPTION; SETTING CONTRACT TERMS FOR DESIGNATED INVESTOR GROUP INVESTMENTS AND THE DISTRIBUTION OF PROCEEDS; PROVIDING FOR TRANSFER AND TERMINATION OF THE MONTANA EQUITY FUND AND MONTANA EVERGREEN FUND; RESTRICTING CERTAIN INVESTMENTS; REQUIRING AN ANNUAL AUDIT AND AN ANNUAL REPORT; MAKING INVESTMENT IN THE MONTANA EQUITY FUND A PERMISSIBLE INVESTMENT FOR CERTAIN ENTITIES; REQUIRING AN APPLICATION FOR A SECURITIES EXEMPTION; INCORPORATING EQUITY CAPITAL INVESTMENT INTO STATE POLICY; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 15] may be cited as the “Montana Equity Capital Investment Act”.

Section 2. Purpose. The purpose of [sections 1 through 15] is to benefit Montana by attracting out-of-state venture investment funds interested in providing equity capital and near-equity capital to Montana entrepreneurs and economic innovators in Montana. Through investment incentives, the state seeks to nourish creation of a private seed and venture capital industry in Montana to fund academic, technological, and innovative startup companies and other companies that are expanding or restructuring. A further purpose is to encourage lead local investors with which out-of-state venture investors can partner in a way that strengthens the state’s economy and builds a significant, permanent capital resource available to serve the needs of Montana businesses in a way that minimizes the use of state funds or tax credits.

Section 3. Definitions. As used in [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) “Board” means the Montana capital investment board provided for in [section 4].

(2) “Capitalize” means to acquire or provide debt, equity, or a combination of debt and equity.

(3) “Certificate” means the document authorized by the board for which contingent, deferred tax credits may be available pursuant to a contract between the board and the designated investor group.

(4) “Certificate holder” means the person to whom a tax credit initially is allowed pursuant to [section 8] and any person who receives a tax credit allocated under [section 8] under a transfer agreement that meets the registration and verification requirements provided for in [section 6].

(5) "Designated investor group" means the investor group selected by the board pursuant to [section 5].

(6) "Equity capital" means cash invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.

(7) "Investor" means an individual, corporation, partnership, limited liability company, or other legal entity organized under state or federal laws that has contracted with the designated investor group and that has capitalized the Montana equity fund.

(8) "Montana business or project" means an entity with at least 50% of its employees or assets located in Montana.

(9) "Montana equity fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group pursuant to [section 10].

(10) "Montana evergreen fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group as a subfund of the Montana equity fund with investments to be made in primary sector businesses as defined in 39-11-103. These businesses must be headquartered in Montana or have 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location.

(11) "Near-equity capital" means cash invested in unsecured, undersecured, subordinated, or convertible loans or debt securities.

(12) "Person" means a taxpayer as defined in 15-30-101 or a corporation as described in 15-31-101.

(13) "Proceeds" means revenue arising from the designated investor group's investments after deducting contractual obligations to the designated investor group's investors and the Montana equity fund's investors. Contractual obligations include but are not limited to fees, reimbursement of expenses, and up to 10% of net realized gains that may be allocated and contractually obligated to the designated investor group and specified Montana equity fund investors.

(14) "Tax credits" means credits allowed pursuant to [section 8] and available to a certificate holder against tax liabilities imposed by Title 15, chapter 30 or 31, or by 33-2-705.

Section 4. Montana capital investment board. (1) There is a Montana capital investment board. The board has the authority to carry out the activities provided for in [sections 1 through 15].

(2) The board consists of five voting members appointed by the governor. Members must be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members may not have an interest in the designated investor group or in any person to whom a tax credit is allocated and issued by the board.

(3) Board members shall serve staggered 4-year terms as provided in 2-15-124(2).

(4) The board shall meet at least once a year.

(5) The governor shall designate a presiding officer.

(6) The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(7) Vacancies must be filled in the same manner as the appointment of the original members.

(8) Members must be compensated for expenses and mileage, as provided in Title 2, chapter 18, part 5, but members may not receive a director's fee, per diem, or salary for service on the board.

(9) The board is attached to the department of commerce for administrative purposes as provided in 2-15-121.

Section 5. Duties of board — appointment or termination of designated investor group — investment plan — rulemaking. (1) The board may hire and fire staff, engage consultants, expend funds, enter into contracts, or terminate contracts.

(2) (a) The board shall solicit investment plans from investor groups for the raising and investing of equity capital and near-equity capital pursuant to [sections 1 through 15]. An investment plan must address:

- (i) the applicant's philosophy and process;
- (ii) evidence of probable success in building equity capital;
- (iii) past experience and expertise in the design, implementation, and management of venture capital investment programs or in capital formation;
- (iv) a plan for achieving the purposes of [section 2]; and
- (v) a plan for achieving Montana investment as described in [section 10(2)].

(b) The board shall select, certify as the designated investor group, and contract with the one investor group considered best qualified to:

- (i) organize, capitalize, manage, and direct the Montana equity fund and the Montana evergreen fund as provided for in [section 10]; and
- (ii) make investments in private seed and venture capital partnerships or entities based on the investment plan provided for in subsection (2)(a).

(c) The designated investor group shall maintain an office in Montana.

(3) The board shall approve the timing of the initial sale of certificates and the implementation of the investment plan provided for in subsection (2) and may terminate the contract of the designated investor group for lack of compliance with the contract, including but not limited to the specifications for Montana investments referred to in [section 10(2)].

(4) The board shall approve the designated investor group's scheduled return of capital and rate of return on capital to the certificate holder. The scheduled rate of return may not exceed the sum of 400 basis points and the return on a U.S. treasury obligation that has a maturity similar to the investment being made by the certificate holder, plus actual tax and other expenses. These rates, whether fixed rates or variable rates, must be reasonable and prudent, based on competitive market rates.

(5) The board, through one of its members, shall, once each calendar quarter while the legislature is not in session, report to the economic affairs interim committee on the board's progress in implementing [sections 1 through 15] and the board's success in achieving the purpose of [sections 1 through 15].

(6) The board may adopt rules to implement [sections 1 through 15].

Section 6. Tax credit registration — verification system. The board shall develop, in conjunction with the department of revenue, a system for registration of tax credits allowed or transferred under [section 8] and a system that permits verification of the validity of a tax credit or a tax credit transfer pursuant to [section 8].

Section 7. Fee. (1) The board shall charge the designated investor group an annual fee that is reasonable and commensurate with costs for implementation of [sections 1 through 15].

(2) Fees collected under this section must be deposited in an account in the state special revenue fund to the credit of the board. The funds deposited in the state special revenue account may be used only to defray the expenses of implementing [sections 1 through 15].

Section 8. Contingent, deferred tax credits. (1) (a) A total of \$60 million of tax credits is available to certificate holders. The amount of tax credits certified for use may not exceed \$25 million prior to January 1, 2009. No more than \$12 million of tax credits may be claimed in a year.

(b) In calculating the \$12 million of tax credits that may be claimed in a year, the board shall notify the department of revenue or the state auditor, as applicable, of all tax certificates presented for redemption in each year and the amount of taxes against which the board has determined the tax credits are to be applied.

(c) Tax credits must be allocated on a first-come, first-serve basis.

(d) Expired tax credits do not count against the aggregate calculated in subsection (1)(b).

(2) A tax credit may not be claimed prior to July 1, 2010, or after July 1, 2031.

(3) Tax credits may be claimed or redeemed by a certificate holder only in accordance with conditions set forth in the certificate issued by the board.

(4) The certificate must state the amount of the tax credit and the tax year in which the tax credit may first be claimed or redeemed as provided in [section 9] and this section.

(5) Subject to subsection (2), a tax credit may be carried forward by the holder for up to 12 years.

(6) (a) The amount of tax credits certified for use by investors in the Montana equity fund is limited to an amount that offsets a shortfall in the scheduled returns of invested capital and returns on invested capital at rates of return in the contract between the designated investor group and the investor as approved by the board.

(b) The certificate must contain the conditions for claiming a tax credit, including:

(i) the scheduled rate of return for the holder and all predecessors of the holder of the certificate;

(ii) the formula by which a shortfall in returns of invested principal and interest is to be calculated;

(iii) the upper limit of tax credits available under the certificate; and

(iv) the dates by which the tax credits may be first redeemed and last redeemed.

(7) A holder of a certificate may transfer the certificate and the associated tax credits.

(8) The tax credit of an investor group that is a partnership, a limited liability company taxed as a partnership, or an S. corporation may be claimed by the partner, member, or shareholder. The tax credit of an investor group that is an estate or trust may be claimed by the beneficiary. The amount of credit claimed by a partner, member, shareholder, or beneficiary must be the partner's, member's, shareholder's, or beneficiary's pro rata share of the earnings of the partnership, limited liability company, S. corporation, trust, or estate.

(9) The certificate must permit a person claiming an interest in a tax credit to record that interest.

(10) (a) A certificate is binding on the board and the department of revenue once capital is provided to the Montana equity fund.

(b) A certificate may not be modified, rescinded, or terminated, except that redemption as provided in [section 9] terminates a certificate.

Section 9. Redemption of tax credits. (1) When a certificate holder submits a certificate for redemption, the board shall request documentation from the designated investor group regarding a shortfall in the scheduled return of capital and rate of return on capital listed on the certificate. The board shall calculate the amount of the allowable tax credit based upon the specifications in the certificate and the documentation from the designated investor group.

(2) The board shall notify the department of revenue or the state auditor, as applicable, of the maximum amount of a tax credit that may be claimed by a certificate holder who has presented a certificate for redemption.

Section 10. Designated investor group duties — contract with board. (1) The designated investor group shall organize, capitalize, and administer the Montana equity fund and a Montana evergreen fund pursuant to its contract with the board.

(2) The contract between the board and the designated investor group must contain the following language as part of the designated investor group's implementation plan regarding investments in the Montana equity fund: "For every \$1 invested by the Montana equity fund in its aggregate portfolio of fund investments, the designated investor group shall seek to cause a minimum of \$1 of equity capital or near-equity capital to be invested in Montana businesses or projects or primary sector businesses, as defined in 39-11-103, that are headquartered in Montana or have at least 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location".

(3) The contract between the board and the designated investor group must identify those investments recognized by the designated investor group as meeting the purposes of subsection (2) regarding investments made in Montana businesses or projects or primary sector businesses.

(4) The designated investor group may receive fees for services. Fees paid to the designated investor group may not be used for lobbying, governmental relations, litigation of the contract with the board, or penalty payments to the state.

(5) A contract between the designated investor group and the board must include:

(a) terms under which the designated investor group or fund partners will share with the state any proceeds;

(b) the term of the contract, which may exceed 7 years, and the effective date of the contract terms;

(c) provisions for investing as described in subsection (2) and allocating the proceeds; and

(d) the timing of distributions.

(6) (a) Proceeds must be reinvested until the Montana equity fund has invested or reserved for investment \$60 million in seed and venture capital partnerships or entities.

(b) Subject to subsection (8), when the condition in subsection (6)(a) is met, distribution of 75% of the proceeds must be made to the Montana evergreen fund and the remainder must be made to the state general fund. When the Montana evergreen fund has invested or reserved for investment \$60 million, distribution of all the proceeds must be made to the state general fund.

(7) The contract must include provisions for the transfer of all investments in the Montana equity fund and the Montana evergreen fund to a new designated investor group upon termination of a contract.

(8) The contract must contain a termination clause for the Montana equity fund and the Montana evergreen fund providing for the liquidation of investments in both funds 50 years after organization of the Montana equity fund. At termination, the proceeds from both funds must be deposited in the general fund.

(9) The designated investor group shall submit to the board for review the contract between the designated investor group and investors.

Section 11. Restrictions on investment. The designated investor group may not, without permission of the board, invest:

(1) more than 25% of the Montana equity fund or the Montana evergreen fund in any one company, that company's affiliates, and that company's subsidiaries; or

(2) in a business venture if the designated investor group's investment in combination with other investments by investors in the Montana equity fund exceeds 49% of the business venture's ownership at the time of the investment decision.

Section 12. Annual audit. (1) The designated investor group shall provide annually to the board, the governor, and the legislative audit committee a financial audit performed each calendar year by an independent auditor.

(2) The audit must include:

(a) the investments made by the designated investor group through the Montana equity fund but may not extend to the audit of individual portfolio companies;

(b) the redemption or claiming of tax credits available to investors in the Montana equity fund, reported in the aggregate; and

(c) a valuation of the aggregate portfolio assets owned by the Montana equity fund and the Montana evergreen fund as of the end of each year and a description of how the designated investor group has implemented the Montana investment plan described in [section 5].

(3) The Montana equity fund shall pay the cost of the audit.

Section 13. Annual report. (1) The designated investor group shall publish an annual report, which must include:

(a) a summary of the annual audit of the Montana equity fund and the Montana evergreen fund conducted pursuant to [section 12];

(b) a review of the designated investor group's progress in implementing its investment plan; and

(c) the number of certificates and the amount of tax credits claimed or redeemed under [section 9].

(2) The designated investor group shall provide copies of the annual report to the governor, an appropriate interim committee of the legislature, and the board.

Section 14. Permissible investments. Investments in the Montana equity fund are permissible investments under applicable state laws for banks, credit unions, and insurance companies.

Section 15. Application for securities exemption. (1) The designated investor group shall apply to the securities commissioner, provided for in 2-15-1901, for an exemption under 30-10-104(11) for any securities transaction undertaken pursuant to [sections 1 through 15].

(2) The tax credits allowed or transferred pursuant to [sections 1 through 15] may not be considered securities under Title 30.

Section 16. Equity capital tax credit. There is allowed a credit against taxes otherwise due under this chapter as provided in [sections 1 through 15].

Section 17. Credit for equity capital investment. There is allowed a credit against taxes otherwise due under this chapter as provided in [sections 1 through 15].

Section 18. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1)

Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the

cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to [sections 1 through 15] may redeem the certificate under the terms of [section 9] as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).

~~(5)~~(6) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

~~(6)~~(7) In addition to the penalty provided for in subsection ~~(5)~~ (6), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

~~(7)~~(8) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 19. Section 90-1-112, MCA, is amended to read:

"90-1-112. Policy — purpose. (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of 2-15-218, 2-15-219, ~~and~~ 90-1-112 through 90-1-114, *and [sections 1 through 15]* is to provide a vision and a direction through the

development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner."

Section 20. Codification instruction. (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 15].

(2) [Section 16] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 16].

(3) [Section 17] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 17].

Section 21. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 538

[SB 217]

AN ACT REVISING APPRENTICE TRAINING LAWS TO ESTABLISH AN APPRENTICE WAGE RATE TIED TO THE STANDARD PREVAILING WAGE RATE FOR CONSTRUCTION SERVICES FOR A PREVAILING WAGE RATE DISTRICT; EXCLUDING CERTAIN APPRENTICE WAGES; DEFINING "APPRENTICE"; AMENDING SECTIONS 18-2-411, 39-6-101, AND 39-6-106, MCA; REPEALING ARM 24.21.414; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the Legislature has required the creation of at least 10 prevailing wage rate districts in 18-2-411, and these districts cover the entire state and use an annual survey to establish prevailing wage rates; and

WHEREAS, the Department of Labor and Industry has created a separate biennial survey of journeyman's wages in districts outside of Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties for a building construction occupation and has used this wage rate rather than the standard prevailing wage rate as a base for calculating the wages of apprentices, thus duplicating efforts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Apprentice wage rate. (1) Except as provided in subsection (3), a wage paid to an apprentice employed for construction services, as defined in 18-2-401, under Title 18, chapter 2, part 4, must:

(a) be based on the standard prevailing rate of wages for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411; and

(b) increase progressively to no more than the employer's lowest journeyman hourly wage from a starting wage of no less than 40% of the hourly wage paid to a journeyman in the same craft and working in the same area or region. A higher wage must be paid if required by federal law, by other state law, or by contract. If the apprentice performs labor in more than one locality, the

apprentice must be paid based on the progressive wage schedule for the journeyman wage rate in the area in which the apprentice is working.

(2) The wage does not include a travel allowance or benefits. Benefits must be paid to an apprentice if work is being performed on a project that is covered by requirements to pay the Montana prevailing wage or a project covered by the federal Davis-Bacon Act, pursuant to 29 CFR, parts 1, 3, and 5.

(3) Wages paid under an individual's written apprenticeship agreement registered with the department of labor and industry as of [the effective date of this act] are excluded from the rate set in subsection (1).

(4) For purposes of this section, "apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department of labor and industry.

Section 2. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402. *The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in [section 1].*"

Section 3. Section 39-6-101, MCA, is amended to read:

"39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register ~~such~~ apprenticeship agreements ~~as that~~ are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, ~~upon taking into consideration performance thereof of the agreement,~~ issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of ~~such the agreements; and~~

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) *use the standard prevailing wage rate for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411 as a base on which an apprenticeship wage is calculated pursuant to [section 1] for apprentices;*

~~(g)(h)~~ *issue such adopt rules as may be necessary to carry out the intent and purposes of this chapter; and*

~~(h)(i)~~ *perform such other duties as that may be required by federal regulations, provided that such the federal regulations are not in conflict with this chapter.*

(2) Not less often than once every 2 years, the department shall make a report of its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public.”

Section 4. Section 39-6-106, MCA, is amended to read:

“39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements ~~shall~~ *must* contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice *using the criteria established in [section 1]*;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any *participating party thereto*. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be ~~utilized~~ *used* for consultation regarding the settlement of differences arising out of the apprenticeship agreement ~~where such if the~~ differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that, if an employer is unable to fulfill ~~his~~ *an* obligation under the apprenticeship agreement, ~~he~~ *the employer* may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department ~~will~~ *shall* continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) ~~such~~ additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which ~~he~~ *the apprentice* is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.”

Section 5. Repealer. ARM 24.21.414 is repealed.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 6, and the provisions of Title 39, chapter 6, apply to [section 1].

Section 7. Effective date. [This act] is effective October 1, 2006.

Approved April 28, 2005

CHAPTER NO. 539

[SB 222]

AN ACT TRANSFERRING THE RESPONSIBILITY FOR COLLECTING AND ISSUING REFUNDS FOR LOCAL OPTION MOTOR FUEL EXCISE TAX FROM THE DEPARTMENT OF TRANSPORTATION TO COUNTY TREASURERS; REQUIRING RETAIL SELLERS OF GASOLINE IN COUNTIES IN WHICH THE TAX IS IMPOSED TO RENDER MONTHLY STATEMENTS TO THE COUNTY TREASURER; REQUIRING A COUNTY THAT IMPOSES THE TAX TO ESTABLISH A MOTOR FUEL EXCISE TAX ACCOUNT FOR DEPOSIT OF THE TAX REVENUE; PROVIDING METHODS FOR APPORTIONMENT OF THE REVENUE; AMENDING SECTIONS 7-14-301, 7-14-302, 7-14-303, AND 7-14-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-301, MCA, is amended to read:

“7-14-301. Local option motor fuel excise tax authorized — definitions. (1) A motor fuel excise tax may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

(3) The initiative or referendum must specify that the tax is to be collected by the ~~department of transportation~~ *county treasurer*.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the initiative or referendum.

(5) ~~Each distributor~~ *By the 25th day of each month, each retail seller of gasoline shall render a monthly statement to the* ~~department of transportation~~ *county treasurer of all gasoline distributed sold during the preceding calendar*

month in the county in which it is sold to the ultimate consumer and other information that the ~~department~~ *county treasurer* requires in order to administer the motor fuel excise tax.

~~(6) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.~~

~~(7)~~(6) The ~~department of transportation~~ *county treasurer* shall establish procedures to provide a refund to a person who has paid the tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

~~(8)~~(7) In this part, the terms “~~distributor~~”, “gasoline”, “motor vehicle”, “person”, and “use” have the meanings ascribed to them in 15-70-201.”

Section 2. Section 7-14-302, MCA, is amended to read:

“7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 ~~shall may~~ use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

~~(2) A county shall contract with the department for reimbursement of the actual costs of collection.~~ One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the ~~distributor~~ *retail seller* for the cost of compliance with this part.”

Section 3. Section 7-14-303, MCA, is amended to read:

“7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel excise tax. (1) *A county that imposes a motor fuel excise tax shall establish a motor fuel excise tax account. When allocating the tax under subsection (2), county commissioners shall take into account any funding requested by a transportation district in the county.*

(2) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be deposited into the county's motor fuel excise tax account and apportioned among the county and municipalities in the county according to one of the following methods that is mutually agreed upon by the county and municipalities:

~~(a) in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year; or~~

~~(b) as determined by an interlocal agreement by distributing 50% to the county and 50% to the incorporated cities and towns within the county apportioned on the basis of population. The distribution to a city or town must be determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county must be determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.~~

~~(b)~~ by basing the distribution upon the proportion of road miles outside municipalities and street miles within each municipality as a ratio of total road and street miles in the county, using the most recent public road miles available from the department of transportation; or

~~(c)~~ by using any other method agreed upon by the affected county and municipalities as determined by an interlocal agreement.

~~(2)(3) All taxes, interest, and penalties collected by the department of transportation county treasurer under this part shall must be promptly transmitted to the state treasurer who shall deposit such funds in the state special revenue fund to the credit of the department of transportation account. Such funds shall be paid quarterly by the state treasurer directly to the county in which the tax was imposed deposited into the account established in subsection (1)."~~

Section 4. Section 7-14-304, MCA, is amended to read:

"7-14-304. Lien for Collection of delinquent tax — interest and penalty — statute of limitations. (1) ~~The lien provisions of 15-70-211 apply to all delinquent motor fuel excise taxes, penalties, and interest due from a distributor under this part. Such a lien has the same force and effect as a lien for delinquent gasoline license tax imposed under Title 15, chapter 70, part 2.~~ Motor fuel taxes imposed pursuant to 7-14-301 and collected by a retailer but not transmitted to the county treasurer are delinquent after the date that they are due to the county treasurer and become a lien upon all real and personal property owned by the retail seller in the county. The county shall collect the delinquent motor fuel taxes in the manner that delinquent personal property taxes are collected.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery."

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 540

[SB 271]

AN ACT ALLOWING FOR AN ADJUSTMENT OF THE GUARANTEED TAX BASE AID PAYMENT TO A SCHOOL DISTRICT AFFECTED BY A TAX PROTEST IN THE EVENT THAT THE FINAL TAXABLE VALUATION OF THE SCHOOL DISTRICT IS REDUCED AS A RESULT OF THE RESOLUTION OF THE PROTEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State guaranteed tax base aid adjustments for protested valuation. For any school district that has taxable valuation that was protested for tax year 2002 through 2004 that exceeds 10% of the district's taxable valuation in each respective year, upon resolution of the protest, the superintendent of public instruction shall compare the amount that the school district would have been eligible to receive, using the revised valuation, to the amount of guaranteed tax base aid that the district general fund actually received. If the calculation exceeds the amount of guaranteed tax base aid paid to the school district's general fund, the superintendent of public instruction shall request an appropriation for the difference.

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning after June 30, 2002.

Approved April 28, 2005

CHAPTER NO. 541

[SB 278]

AN ACT CREATING A SPECIAL PRACTICE PERMIT FOR NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS; PROVIDING CRITERIA FOR OBTAINING THE SPECIAL PRACTICE PERMIT; REQUIRING REGISTRATION WITH THE BOARD OF PUBLIC ACCOUNTANTS; PROHIBITING THE PRACTICE OF PUBLIC ACCOUNTING BY NONRESIDENTS WITHOUT REGISTRATION; AND AUTHORIZING THE BOARD TO ADOPT RULES IMPLEMENTING PROCEDURES AND FEES FOR SPECIAL PRACTICE PERMITS AND REGISTRATION BY NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special practice permit for nonresident certified public accountant — rules. (1) A person may obtain a special practice permit if the person:

- (a) is not a Montana resident;
 - (b) does not maintain an office in Montana;
 - (c) is licensed, under an active status license, to practice public accounting as a certified public accountant in one or more jurisdictions recognized by the board as having licensing standards substantially equivalent to the standards authorizing the practice of public accounting in this state; and
 - (d) has not had an adverse disciplinary action taken against the person for the practice of public accounting by any other jurisdiction.
- (2) A person who obtains a special practice permit:
- (a) is subject to the disciplinary authority of the board for acts performed pursuant to this section in this state; and
 - (b) consents to the appointment of the board of accountancy or a corresponding entity of the jurisdiction in which the person was issued a license to practice public accounting as a certified public accountant as the person's agent for the service of process in any action or proceeding by the board of this state against the person.
- (3) A special practice permit issued under this section may be renewed on an annual basis in the manner prescribed by the board by rule.
- (4) The board may adopt rules, including rules establishing fees that are commensurate with costs, to implement [section 2] and this section.

Section 2. Nonresident registration. (1) A person, firm, partnership, corporation, or other business entity that offers to engage in or engages in public accounting services in Montana through a person holding a special practice permit shall register with the board.

- (2) (a) A person with a special practice permit engages in unprofessional conduct if the person offers services for or on behalf of a person, firm,

partnership, corporation, or other business entity that is not registered with the board pursuant to 37-50-335 or this section.

(b) A person, firm, partnership, corporation, or other business entity may not lawfully engage in or assist in providing public accounting services in this state unless properly registered with the board under 37-50-335 or this section.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 50, part 3, and the provisions of Title 37, chapter 50, part 3, apply to [sections 1 and 2].

Approved April 28, 2005

CHAPTER NO. 542

[SB 285]

AN ACT GENERALLY REVISING THE MOTOR VEHICLE LAWS; REORGANIZING AND RECODIFYING DEFINITIONS; REPLACING ALLOCATIONS OF MOTOR VEHICLE REVENUE TO SPECIAL ACCOUNTS WITH A PERCENTAGE OF THE REVENUE COLLECTED RATHER THAN AN AMOUNT PER VEHICLE; PROVIDING FOR THE DIRECT DEPOSIT OF THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR STATE PARKS; REVISING THE TRANSFER OF FUNDS BY COUNTY TREASURERS TO THE STATE; REQUIRING THE TRANSFER OF VEHICLE AND VESSEL TRANSACTION FEES TO THE DEPARTMENT OF JUSTICE BEGINNING ON JULY 1, 2006; REVISING AND CLARIFYING REGISTRATION FEES FOR WATERCRAFT, SNOWMOBILES, AND VEHICLES; COMBINING FEES IN LIEU OF TAX AND REGISTRATION FEES; AMENDING SECTIONS 10-2-112, 10-3-801, 15-1-101, 15-1-122, 15-1-504, 15-6-138, 15-6-201, 15-6-215, 15-8-201, 15-8-202, 15-15-201, 15-16-202, 15-24-301, 15-30-121, 15-50-207, 15-68-101, 20-9-331, 20-9-333, 20-9-360, 23-1-128, 23-2-512, 23-2-513, 23-2-515, 23-2-519, 23-2-601, 23-2-614, 23-2-616, 23-2-619, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-804, 23-2-809, 23-2-818, 30-11-701, 33-23-204, 37-72-101, 45-5-205, 61-1-101, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-110, 61-3-201, 61-3-202, 61-3-204, 61-3-205, 61-3-206, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-216, 61-3-217, 61-3-218, 61-3-219, 61-3-220, 61-3-221, 61-3-222, 61-3-223, 61-3-224, 61-3-301, 61-3-302, 61-3-303, 61-3-311, 61-3-312, 61-3-313, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-318, 61-3-321, 61-3-322, 61-3-323, 61-3-324, 61-3-325, 61-3-331, 61-3-332, 61-3-333, 61-3-334, 61-3-335, 61-3-342, 61-3-345, 61-3-401, 61-3-403, 61-3-404, 61-3-411, 61-3-412, 61-3-413, 61-3-421, 61-3-422, 61-3-423, 61-3-425, 61-3-431, 61-3-446, 61-3-448, 61-3-456, 61-3-458, 61-3-460, 61-3-465, 61-3-467, 61-3-468, 61-3-474, 61-3-479, 61-3-480, 61-3-481, 61-3-501, 61-3-503, 61-3-506, 61-3-507, 61-3-509, 61-3-520, 61-3-526, 61-3-529, 61-3-535, 61-3-537, 61-3-562, 61-3-603, 61-3-604, 61-3-607, 61-3-701, 61-3-702, 61-3-703, 61-3-704, 61-3-707, 61-3-708, 61-3-709, 61-3-711, 61-3-712, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-732, 61-3-733, 61-3-736, 61-3-737, 61-4-101, 61-4-102, 61-4-104, 61-4-109, 61-4-110, 61-4-111, 61-4-112, 61-4-113, 61-4-120, 61-4-121, 61-4-122, 61-4-123, 61-4-125, 61-4-129, 61-4-131, 61-4-141, 61-4-143, 61-4-202, 61-4-204, 61-4-208, 61-4-301, 61-4-302, 61-4-306, 61-4-307, 61-4-310, 61-4-404, 61-4-501, 61-4-503, 61-4-504, 61-4-505, 61-4-506, 61-4-511, 61-4-519, 61-4-525, 61-5-104, 61-5-112, 61-5-119, 61-5-121, 61-5-208, 61-6-102, 61-6-301, 61-8-102, 61-8-201, 61-8-210, 61-8-310, 61-8-336, 61-8-341, 61-8-354,

61-8-371, 61-8-380, 61-8-383, 61-8-384, 61-8-401, 61-8-605, 61-8-704, 61-8-713, 61-8-801, 61-9-102, 61-9-103, 61-9-226, 61-9-302, 61-9-304, 61-9-321, 61-9-402, 61-9-405, 61-9-406, 61-9-412, 61-9-415, 61-9-426, 61-10-102, 61-10-104, 61-10-123, 61-10-141, 61-10-148, 61-10-206, 61-10-225, 61-11-203, 61-12-101, 61-12-102, 61-13-103, 75-10-532, 76-2-202, 76-2-302, 87-2-803, AND 87-3-101, MCA; REPEALING SECTIONS 23-2-516, 23-2-517, 23-2-518, 23-2-626, 23-2-803, 23-2-817, 61-1-102, 61-1-103, 61-1-104, 61-1-105, 61-1-106, 61-1-107, 61-1-108, 61-1-109, 61-1-110, 61-1-111, 61-1-112, 61-1-113, 61-1-114, 61-1-115, 61-1-116, 61-1-117, 61-1-118, 61-1-119, 61-1-120, 61-1-121, 61-1-123, 61-1-124, 61-1-125, 61-1-126, 61-1-127, 61-1-128, 61-1-129, 61-1-130, 61-1-131, 61-1-132, 61-1-133, 61-1-134, 61-1-135, 61-1-136, 61-1-137, 61-1-138, 61-1-139, 61-1-140, 61-1-141, 61-1-142, 61-1-201, 61-1-202, 61-1-203, 61-1-204, 61-1-205, 61-1-206, 61-1-207, 61-1-208, 61-1-209, 61-1-210, 61-1-211, 61-1-212, 61-1-301, 61-1-302, 61-1-303, 61-1-304, 61-1-305, 61-1-306, 61-1-307, 61-1-308, 61-1-309, 61-1-310, 61-1-311, 61-1-313, 61-1-314, 61-1-315, 61-1-316, 61-1-317, 61-1-318, 61-1-319, 61-1-320, 61-1-321, 61-1-401, 61-1-402, 61-1-403, 61-1-404, 61-1-405, 61-1-406, 61-1-407, 61-1-408, 61-1-409, 61-1-410, 61-1-411, 61-1-412, 61-1-413, 61-1-414, 61-1-415, 61-1-501, 61-1-502, 61-1-503, 61-1-504, 61-1-505, 61-1-506, 61-1-507, 61-1-508, 61-1-509, 61-1-510, 61-1-511, 61-1-512, 61-1-513, 61-1-514, 61-1-515, 61-1-601, 61-1-602, 61-1-603, 61-1-604, 61-3-521, 61-3-522, 61-3-523, 61-3-527, 61-3-528, 61-3-530, 61-3-560, AND 61-3-561, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-112, MCA, is amended to read:

“10-2-112. Veterans’ services special revenue account — sources of funds — designated uses. (1) There is a veterans’ services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.

(2) Money transferred pursuant to ~~15-1-122(3)(h)~~ 15-1-122(3)(d) from license plate sales as described in 10-2-114 and from gifts, grants, or donations must be deposited in the veterans’ services account.

(3) Legislative appropriations of money in the veterans’ services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans’ services federal account in the federal special revenue fund established for federal funds received under 10-2-106.”

Section 2. Section 10-3-801, MCA, is amended to read:

“10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to ~~15-1-122(3)(g)~~ 15-1-122(3)(f);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of search and rescue missions conducted by a county sheriff's office at a maximum of \$3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing ~~a county sheriff-offices~~ *sheriff's office*, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year; and

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training."

Section 3. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term “comparable property” means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term “credit” means solvent debts, secured or unsecured, owing to a person.

(g) (i) “Department”, except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms “gas” and “natural gas” are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term “leasehold improvements” means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term “livestock” means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) (i) The term “manufactured home” means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in ~~61-1-501~~ 61-1-101 and in subsection (1)(m) of this section, a housetrailer, as defined in ~~61-1-501~~ 61-1-101, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term “mobile home” means forms of housing known as “trailers”, “housetrailers”, or “trailer coaches” exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term “personal property” includes everything that is the subject of ownership but that is not included within the meaning of the terms “real estate” and “improvements” and “intangible personal property” as that term is defined in 15-6-218.

(o) The term “poultry” includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term “property” includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term “real estate” includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) “Recreational” means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) “Research and development firm” means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term “stock in trade” means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term “taxable value” means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase “municipal corporation” or “municipality” or “taxing unit” includes a county, city, incorporated town, township, school district, irrigation

district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 4. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b)(a) \$0 in fiscal years 2004 and 2005;~~

~~(c)(b) \$3,050,205 in fiscal year 2006; and~~

~~(d)(c) in each succeeding fiscal year, the amount in subsection (2)(e) (2)(b), increased by 1.5% in each succeeding fiscal year.~~

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5,:

~~(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and~~

~~(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532. 1.63% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.5% of the motor vehicle revenue deposited in the state general fund in succeeding fiscal years. The amount of 8.75% of the allocation in fiscal year 2006 and 9.48% of the allocation in fiscal year 2007 and succeeding years must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.~~

~~(b) to the noxious weed state special revenue account provided for in 80-7-816;~~

~~(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and~~

~~(ii) for vehicles registered or reregistered pursuant to 61-3-321:~~

~~(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and~~

~~(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and~~

~~(C) \$7.50 for each permanently registered light vehicle 1.54% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.52% of the motor vehicle revenue deposited in the state general fund in succeeding fiscal years;~~

(c) to the department of fish, wildlife, and parks:

~~(i) \$2.50 in fiscal year 2006 and, 0.47% of the motor vehicle revenue deposited in the state general fund in each subsequent fiscal year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received with the applicable percentage to be:~~

~~(A) used to:~~

~~(I) acquire and maintain pumpout equipment and other boat facilities, 5.2% in fiscal year 2006 and 4.8% in fiscal year 2007 and succeeding years;~~

~~(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 20.8% in fiscal year 2006 and 19.1% in fiscal year 2007 and succeeding years;~~

~~(III) enforce the provisions of 23-2-804, 12.1% in fiscal year 2006 and 11.1% in fiscal year 2007 and succeeding fiscal years; and~~

~~(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 18.1% in fiscal year 2006 and 16.7% in fiscal year 2007 and succeeding fiscal years; and~~

~~(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 43.8% in fiscal year 2006 and 48.3% in fiscal year 2007 and succeeding fiscal years;~~

~~(ii) \$5 in fiscal year 2006 and, 0.12% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.10% of the motor vehicle revenue deposited in the state general fund in each subsequent fiscal year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and~~

~~(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;~~

~~(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off highway vehicle decal issued under 23-2-804 and each off highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;~~

~~(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-221;~~

~~(vi)(iii) an amount equal to 20% 0.5% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.16% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and~~

~~(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;~~

~~(d) 0.75% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.65% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year with 21.30% in fiscal year 2006 and 24.55% in fiscal year 2007 and succeeding fiscal years to be deposited in the state veterans' cemetery account; provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459 and with 78.70% in fiscal year 2006 and 75.45% in fiscal year 2007 and succeeding fiscal years to be deposited in the veterans' services account provided for in 10-2-112(1);~~

~~(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:~~

~~(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;~~

~~(f)(e) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) 0.59% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.31% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and~~

~~(g)(f) to the search and rescue account provided for in 10-3-801,:~~

~~(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;~~

~~(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and~~

~~(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803 0.20% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.05% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year; and.~~

~~(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).~~

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners. For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) *fees for issuing a motor vehicle title paid pursuant to 61-3-203;*

(b) *fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;*

(c) *GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and*

(d) *all money collected pursuant to 15-1-504(3).*

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 5. Section 15-1-504, MCA, is amended to read:

“15-1-504. Settlement of county treasurer with department. (1) Except as provided in ~~subsection~~ *subsections (2) and (3)*, the county treasurer, between the 1st and 20th days of each month, shall remit to the department all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the department prescribes. The department may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the department an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. ~~In~~ *By July 15*, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

(3) *Beginning July 1, 2006, the county treasurer shall remit to the department of justice by the 20th of each month all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the department of justice. The department may assess counties an interest charge, at the rate of 10% a year, on all money that is not remitted by the prescribed time.”*

Section 6. Section 15-6-138, MCA, is amended to read:

“15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in ~~61-1-104~~ *61-1-101*;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotels, motels, offices, petroleum marketing stations, or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from

taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)”

Section 7. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

- (a) except as provided in 15-24-1203, the property of:
 - (i) the United States, except:
 - (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or
 - (B) as provided in 15-24-1103;
 - (ii) the state, counties, cities, towns, and school districts;
 - (iii) irrigation districts organized under the laws of Montana and not operating for profit;
 - (iv) municipal corporations;
 - (v) public libraries; and
 - (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;
- (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.
- (d) property that is:
 - (i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
 - (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
 - (iii) not maintained and operated for private or corporate profit;
- (e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;
- (f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;
- (g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;
- (h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

- (i) truck canopy covers or toppers and campers;
- (j) a bicycle, as defined in ~~61-1-123~~ 61-8-102, used by the owner for personal transportation purposes;
- (k) motor homes;
- (l) all watercraft;
- (m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;
- (n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;
- (o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and
(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;
- (p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;
- (q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.
- (r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (A) construct, repair, and maintain improvements to real property; or
 - (B) repair and maintain machinery, equipment, appliances, or other personal property;
(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;
- (s) harness, saddlery, and other tack equipment;
- (t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;
- (u) timber as defined in 15-44-102;

(v) all trailers ~~as defined in 61-1-111~~, semitrailers ~~as defined in 61-1-112~~, pole trailers ~~as defined in 61-1-114~~, and travel trailers as *those terms are defined in 61-1-131 61-1-101*;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

~~(i) 31% for tax year 2003;~~

~~(ii) 31.4% for tax year 2004;~~

~~(iii)(i) 32% for tax year 2005;~~

~~(iv)(ii) 32.6% for tax year 2006;~~

~~(v)(iii) 33.2% for tax year 2007;~~

~~(vi)(iv) 34% for tax year 2008 and succeeding tax years;~~

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

~~(i) 13% for tax year 2003;~~

~~(ii) 13.3% for tax year 2004;~~

~~(iii)(i) 13.8% for tax year 2005;~~

~~(iv)(ii) 14.2% for tax year 2006;~~

~~(v)(iii) 14.6% for tax year 2007;~~

~~(vi)(iv) 15% for tax year 2008 and succeeding tax years;~~

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in ~~61-1-139~~ 61-1-101; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

- (i) all agricultural implements and equipment;
 - (ii) all mining machinery, fixtures, equipment, tools, and supplies;
 - (iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;
 - (iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;
 - (v) all goods and equipment that are intended for rent or lease;
 - (vi) special mobile equipment as defined in ~~61-1-104~~ 61-1-101;
 - (vii) furniture, fixtures, and equipment;
 - (viii) x-ray and medical and dental equipment;
 - (ix) citizens' band radios and mobile telephones;
 - (x) radio and television broadcasting and transmitting equipment;
 - (xi) cable television systems;
 - (xii) coal and ore haulers; and
 - (xiii) theater projectors and sound equipment.
- (2) (a) For the purposes of subsection (1)(e):
- (i) the term "institutions of purely public charity" includes any organization that meets the following requirements:
 - (A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.
 - (B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.
 - (ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.
- (b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 8. Section 15-6-215, MCA, is amended to read:

"15-6-215. Exemption for motion picture and television commercial property. Except as provided in 15-24-305 and 61-3-520, all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation and registration fees under ~~61-3-560 and 61-3-561~~ 61-3-321(2), provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year."

Section 9. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department shall, between January 1 and the first Monday of August in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

- (a) motor vehicles;
- (b) motor homes, travel trailers, and campers;
- (c) watercraft;
- (d) livestock;
- (e) property defined ~~in 61-1-104~~ as special mobile equipment *in 61-1-101* that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;
- (f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and
- (g) property subject to the provisions of 15-16-203.”

Section 10. Section 15-8-202, MCA, is amended to read:

“15-8-202. Motor vehicle assessment by department of justice. (1) (a) The department of justice shall determine the registration fee on light vehicles in accordance with ~~61-3-560 through 61-3-321~~ and 61-3-562.

(b) For the purposes of the local option *motor* vehicle tax under 61-3-537, the department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

(c) The department of justice shall determine the *registration fee in lieu of tax* for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with ~~61-3-528~~ 61-3-321 and 61-3-529.

(d) Taxes, *and* registration fees, ~~or fees in lieu of tax~~ on a motor vehicle under this subsection (1) must be assessed or imposed in each year on the person who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date.

(2) A tax or fee ~~in lieu of tax~~ may not be assessed or imposed against motor vehicles subject to taxation or to a fee ~~in lieu of tax~~ that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) “Purchasers” includes dealers who apply for registration or reregistration of motor vehicles.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1.

(5) (a) The department of justice is authorized to appear in any proceeding before a county tax appeal board, the state tax appeal board, or a court that seeks to dispute an assessment made by the department pursuant to the authority granted under this section.

(b) For the purposes of proceedings before county tax appeal boards or the state tax appeal board, service of the application required under 15-15-201 must be made on the attorney general. A copy of any application giving rise to a proceeding before a county tax appeal board or the state tax appeal board must also be served on the county treasurer of the county in which the vehicle that is the subject of the proceeding was registered.”

Section 11. Section 15-15-201, MCA, is amended to read:

“15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles. (1) (a) A taxpayer who seeks to appeal the imposition of local option taxes on light vehicles or fees in lieu of tax assessed against a motor vehicle and imposed by the department of justice under authority of 15-8-202 shall file a written application for the appeal not later than 30 days after the anniversary date for reregistration, as determined by 61-3-315, of the *motor* vehicle that is the subject of the appeal. The application must be on a form prescribed by the department of justice in consultation with the state tax appeal board.

(b) The application must include a specific explanation of the basis for the taxpayer’s appeal. The basis for appeal must be related to the factors to be considered and applied by the department of justice under 61-3-503, 61-3-506, ~~61-3-528~~, and 61-3-529.

(2) (a) The treasurer of the county or municipality is not required to deposit local option vehicle taxes or fees in lieu of tax on a motor vehicle paid under protest in the special fund designated as a protest fund as required for property taxes under 15-1-402. The taxes or fees paid under protest may be reported and distributed in the same manner as those received without protest.

(b) If a refund is payable as a result of the taxpayer prevailing in a tax appeal or court proceeding concerning the protested motor vehicle taxes or fees, a refund may be made in accordance with 15-16-603.

(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed by December 1. If during its current session, a county tax appeal board refuses or fails to hear a taxpayer’s application that was timely filed by December 1, then the taxpayer’s application is considered to be granted on the day following the board’s final meeting for that year.

(b) A motor vehicle tax appeal filed after December 1 may be held over by the board to a session in the following year. If a taxpayer’s application that was timely filed after December 1 of the current session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board’s final meeting for that year.”

Section 12. Section 15-16-202, MCA, is amended to read:

“15-16-202. ~~Boats, snowmobiles, and motor~~ Motor vehicles — payment of fees. (1) ~~The fee in lieu of personal property taxes assessed against a motorboat, sailboat, or personal watercraft described in 23-2-517 for the year in which application for a registration decal is made must be paid before the registration decal may be issued pursuant to 23-2-515.~~

~~(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made must be paid before a snowmobile may be registered pursuant to 23-2-616.~~

~~(3)~~(1) (a) Except for mobile homes and manufactured homes as defined in 15-1-101 and except as provided in subsection ~~(3)(b)~~ (1)(b) of this section, the light vehicle registration fee or fee in lieu of tax imposed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(b) The vehicle registration fees or fee in lieu of tax imposed against a motor vehicle described in 61-3-303(9) must be paid before a motor vehicle may be registered pursuant to 61-3-303.

(4)(2) The provisions of ~~subsections (1) and (3)(a)~~ *subsection (1)(a)* do not require payment of the immediately previous year's fees if the fees have already been paid."

Section 13. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property ~~whose~~ *belonging to an* owner or user *who* is engaged in a gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle subject to the registration fee imposed by ~~61-3-560 and 61-3-561~~ *61-3-321(2)* that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration fees as follows:

(a) The motor vehicle fee is imposed by the county in which it is located.

(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly fees are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of \$35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana."

Section 14. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in ~~61-3-560 through 61-3-321(2)~~ and 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated

child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 15. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-321(2) and 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit."

Section 16. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

(3) (a) "Base rental charge" means the following:

- (i) charges for time of use of the rental vehicle and mileage, if applicable;
- (ii) charges accepted by the renter for personal accident insurance;
- (iii) charges for additional drivers or underage drivers; and
- (iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

- (i) rental vehicle price discounts allowed and taken;
- (ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;
- (iii) motor fuel;
- (iv) intercity rental vehicle drop charges; or
- (v) taxes imposed by the federal government or by state or local governments.

(4) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(5) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The term does not include:

- (i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments; or
- (iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the

Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(7) (a) "Motor vehicle" means a light vehicle as defined in ~~61-1-139~~ 61-1-101, a motorcycle as defined in ~~61-1-105~~ 61-1-101, a motor-driven cycle as defined in ~~61-1-106~~ 61-1-101, a quadricycle as defined in ~~61-1-133~~ 61-1-101, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

- (i) is rented for a period of not more than 30 days;
- (ii) is rented without a driver, pilot, or operator; and
- (iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

- (i) a rental vehicle rented pursuant to a contract for insurance; and
- (ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

(9) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(10) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(11) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

(12) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(13) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

(14) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) the seller's cost of the property sold;
- (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) delivery charges;
- (v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections (14)(a)(iii) through (14)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(15) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

(16) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

(17) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(18) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business."

Section 17. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.

(1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under ~~23-2-517, 23-2-803, 61-3-321(2) or (3), 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204,~~ for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; and

(g) oil and natural gas production taxes."

Section 18. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.

(1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under ~~23-2-517, 23-2-803, 61-3-321(2) or (3), 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204,~~ for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703; and

(d) oil and natural gas production taxes."

Section 19. Section 20-9-360, MCA, is amended to read:

"20-9-360. State equalization aid levy. Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under ~~23-2-517, 23-2-803, 61-3-321(2) or (3), 61-3-521,~~ 61-3-527, 61-3-529, 61-3-537, ~~61-3-560 through~~ 61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana."

Section 20. Section 23-1-128, MCA, is amended to read:

"23-1-128. Protection of riparian vegetation — limit on motorized camping, operation of off-highway vehicles. In order to protect riparian vegetation, provide for stable streambanks, reduce erosion, and provide for nutrient barriers to protect the quality of rivers and streams:

(1) camping in a motor vehicle, as defined in ~~61-1-102~~ 61-1-101, is discouraged within 25 feet of a river or stream in state parks and fishing access sites; and

(2) the off-road operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except for administrative purposes."

Section 21. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identifying number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by ~~a fee of \$3.50 in calendar year 2004 and, in each subsequent year, \$15.50~~

prescribed in 61-3-321(10). Any alteration, change, or false statement contained in the application renders the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

~~(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required under 23-2-517 for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft before the application for certification or, if applicable, recertification may be accepted by the county treasurer.~~

~~(3)~~(2) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

~~(4)~~(3) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

~~(5)~~(4) A certificate of number and a registration decal issued under this part are effective unless terminated or discontinued in accordance with the provisions of this part.

~~(6)~~(5) If ownership is transferred, the purchaser shall notify the county treasurer within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

~~(7)~~(6) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

~~(8)~~(7) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the

identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft. A registration decal issued under this part must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

~~(9) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.~~

~~(10)~~(8) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name if the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 22. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's or manufacturer's identifying number — premises — inspection — bond — judgment — temporary registration permit. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number must be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include the dealer's or manufacturer's name and business address. Each dealer or manufacturer must have one identifying number assigned to the dealer's or manufacturer's business.

(3) An application for a dealer's or manufacturer's identifying number and a certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and registration decal, \$5;

(b) for each additional certificate of number and registration decal applied for in any application, \$2.

(4) The department of justice shall issue certificates of number for the identifying number assigned to a dealer or manufacturer in the same manner as

provided in 23-2-512(1) and ~~(8)~~ (7), except that a boat may not be described in a certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number must be displayed in the same manner as provided in ~~23-2-512(8)~~ 23-2-512(7), except that the number may be temporarily attached. The last three letters must be "DLR" for dealer and "MFR" for manufacturer. These letters must be included, respectively, in dealer or manufacturer identification numbers.

(6) A person other than a dealer or manufacturer or an employee of a dealer or manufacturer may not display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) A dealer or manufacturer or an employee of a dealer or manufacturer may not use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1).

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where all business records are maintained and where the dealer displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to ensure compliance with this section.

(9) To qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that the dealer sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of \$50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with the application a bond of \$5,000. The bond must be conditioned that the applicant will conduct the business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage because of the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

(11) Prior to the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in ~~61-1-603~~ 61-1-101. The temporary registration permit expires 30 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice."

Section 23. Section 23-2-515, MCA, is amended to read:

"23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 or 23-2-513 must display a registration decal. For this purpose, the county treasurer, upon proof of payment of the *registration fee in*

~~lieu of tax~~ as required by ~~15-16-202~~ for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft ~~61-3-321(10)~~, shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat or sailboat do not expire while the motorboat or sailboat remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers.”

Section 24. Section 23-2-519, MCA, is amended to read:

“23-2-519. (Temporary) Penalty — disposition. (1) Failure to pay the *registration fee in lieu of tax* as provided for in ~~23-2-517~~ ~~61-3-321(10)~~ is a misdemeanor, punishable by a fine equal to four times the *registration fee in lieu of tax* that is due on the motorboat, sailboat, personal watercraft, or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part. (Terminates June 30, 2006—sec. 4, Ch. 95, L. 2001.)

23-2-519. (Effective July 1, 2006) Penalty — disposition. (1) Failure to pay the *registration fee in lieu of tax* as provided for in ~~23-2-517~~ ~~61-3-321(10)~~ is a misdemeanor, punishable by a fine equal to five times the *registration fee in lieu of tax* that is due on the motorboat, sailboat, personal watercraft, or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part.”

Section 25. Section 23-2-601, MCA, is amended to read:

“23-2-601. Definition of terms. As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the context requires otherwise, the following definitions apply:

(1) “Certificate of title” means the document issued by the department of justice as prima facie evidence of ownership.

(2) “Certificate of registration” means the owner’s receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(3) “dbA” means sound pressure level measured on the “A” weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(6) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana."

Section 26. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, with respect to registration, registration decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 27. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and registration decal — application and issuance — use of certain fees. (1) Except for a snowmobile registered under

23-2-621, a snowmobile may not be operated on public lands by any person unless it has been registered and a registration decal is displayed in a conspicuous place on the left side of the cowl.

(2) (a) A Montana resident who owns a snowmobile operated on public land shall register the snowmobile at the county treasurer's office in the county where the owner resides.

(b) A county treasurer shall register a snowmobile if:

(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.

(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.

(3) The owner registering a snowmobile shall pay a *the* registration fee of ~~\$6.50 in calendar year 2004 and, in each subsequent year, \$20.50 prescribed in 61-3-321(11)~~ and, if the snowmobile has previously been registered, show the county treasurer the registration receipt for the most recent year in which the snowmobile was registered. Upon payment of the proper fees, ~~including the fee in lieu of tax~~, the treasurer shall issue a registration receipt that contains information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the application to the department of justice and shall issue to the applicant a registration decal in the style and design prescribed by the department of justice.

(5) The county treasurer may not register a snowmobile under this section unless the applicant has paid the registration fee ~~and the fee in lieu of property tax on the snowmobile as required by 15-16-202.~~

(6) All money collected from payment of registration fees and all interest accruing from use of this money must be forwarded to the ~~department of revenue~~ state, as provided in 15-1-504, for deposit in the state general fund.

~~(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund.~~

~~(8) The fee imposed in subsection (3) is a one-time fee except on change of ownership. When ownership of the snowmobile changes, the new owner shall pay the fee in subsection (3)."~~

Section 28. Section 23-2-619, MCA, is amended to read:

"23-2-619. Dealer registration certificate — use of fees — temporary registration permit. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer registration certificate must be issued in accordance with 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(b) To qualify as a dealer, the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all snowmobiles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any snowmobile offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of snowmobiles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of snowmobiles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in snowmobiles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in snowmobiles.

(2) The dealer application must be accompanied by an application fee of \$5 and a registration fee of \$5. Upon receipt of the dealer application and payment of fees, the dealer must be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year

or pay an additional \$50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of \$2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) Prior to the delivery of a snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a temporary registration permit. The temporary registration permit expires 20 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.

(9) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund."

Section 29. Section 23-2-631, MCA, is amended to read:

"23-2-631. Operation on public roads, streets, and highways. (1) A person may not operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which

must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

Section 30. Section 23-2-634, MCA, is amended to read:

"23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with other standards for measurement of sound level that the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

Section 31. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

Section 32. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable *registration* fee ~~in lieu of tax~~ payable under ~~23-2-626~~ *61-3-321*.

(2) A person who violates any other provision of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 or a rule adopted pursuant to

those sections shall pay a civil penalty of not less than \$15 or more than \$500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than \$50 or more than \$1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile meets the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 is subject to the penalty provisions of subsection (2) if the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 constitutes a separate violation."

Section 33. Section 23-2-644, MCA, is amended to read:

"23-2-644. Deposit of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, ~~23-2-626~~, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the ~~department of revenue~~ state, as provided in 15-1-504, for deposit in the state general fund."

Section 34. Section 23-2-804, MCA, is amended to read:

"23-2-804. Decal required. (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by a person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid:

(a) (i) ~~the fee in lieu of tax provided for in 23-2-803; and~~

(ii) the registration fee provided for in 61-3-321(5); or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321(8), as evidenced by presentation of an owner's certificate of registration and payment receipt. The county treasurer may confirm the registration status of a motorcycle or quadricycle by examining the current registration receipt for the vehicle or checking the electronic record of title for the vehicle.

(2) The decal must be serially numbered."

Section 35. Section 23-2-809, MCA, is amended to read:

"23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of \$5 to the county treasurer, who shall ~~distribute forward the fee as provided in 23-2-803 to the state, as provided in 15-1-504, for deposit in the state general fund.~~

Section 36. Section 23-2-818, MCA, is amended to read:

"23-2-818. Dealer registration certificate — temporary registration permit. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless the dealer has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of \$5 and a registration fee of \$5. To qualify for the fees in this subsection, the applicant for renewal shall certify that the applicant has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of \$2 each.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the

bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional \$50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) Prior to delivery of an off-highway vehicle to a purchaser, the dealer shall issue and affix to the off-highway vehicle a temporary registration permit, as defined in ~~61-1-603~~ *61-1-101*. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.

(8) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the state general fund."

Section 37. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

- (b) industrial and construction equipment and repair parts;
 - (c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in ~~61-1-314~~ *61-1-101*;
 - (d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in ~~Title 61, chapter 1, part 1~~ *61-1-101*, and repair parts;
 - (e) snowmobiles, as defined in 23-2-601, and repair parts;
 - (f) off-highway vehicles, as defined in 23-2-801, and repair parts; and
 - (g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.
- (5) "Net cost" means:
- (a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and
 - (b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.
- (6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.
- (7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 38. Section 33-23-204, MCA, is amended to read:

"33-23-204. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.
- (b) The term does not include a bicycle as defined in ~~61-1-123~~ *61-8-102*.
- (2) "Motor vehicle liability policy" means a policy of automobile or motor vehicle insurance against liability required under Title 61, chapter 6, parts 1 and 3, and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages."

Section 39. Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

- (a) "construction blaster" means a person who engages in construction blasting;
- (b) "construction blasting" means the use of explosives to:
 - (i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) “department” means the department of labor and industry;

(d) “explosive” has the meaning provided in ~~61-1-506~~ 61-9-102.

(3) This chapter does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e).”

Section 40. Section 45-5-205, MCA, is amended to read:

“45-5-205. Negligent vehicular assault — penalty. (1) A person who negligently operates a vehicle, other than a bicycle as defined in ~~61-1-123~~ 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed.”

Section 41. Section 61-1-101, MCA, is amended to read:

“61-1-101. Definitions. ~~Unless~~ *As used in this title, unless* the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter. *following definitions apply:*

(1) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(2) (a) “Camper” means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) *The term does not include a truck canopy cover or topper.*

(3) *"Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.*

(4) *"Commercial driver's license" means:*

(a) *a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and*

(b) *the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.*

(5) (a) *"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:*

(i) *has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;*

(ii) *has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;*

(iii) *is designed to transport at least 16 passengers, including the driver;*

(iv) *is a school bus as defined in 20-10-101; or*

(v) *is of any size and is used to transport any quantity or form of hazardous material, as defined in 61-8-801, required to be placarded pursuant to Title 49, Code of Federal Regulations.*

(b) *The following vehicles are not commercial motor vehicles:*

(i) *an authorized emergency service vehicle:*

(A) *equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and*

(B) *entitled to the exemptions granted under 61-8-107; or*

(ii) *a vehicle:*

(A) *controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;*

(B) *used to transport farm products, farm machinery, or farm supplies within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and*

(C) *not used to transport goods for compensation or for hire.*

(c) *For purposes of this subsection (5):*

(i) *"farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;*

(ii) *"gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; and*

(iii) *"gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle.*

(6) *“Commission” means the state transportation commission.*

(7) (a) *“Dealer” means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.*

(b) *The term does not include the following:*

(i) *receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;*

(ii) *employees of the persons included in subsection (7)(b)(i) when engaged in the specific performance of their duties as employees; or*

(iii) *public officers while performing or in the operation of their duties.*

(8) *“Declared weight” means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.*

(9) *“Department” means the department of justice acting directly or through its duly authorized officers or agents.*

(10) *“Dolly or converter gear” means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.*

(11) *“Driver” means a person who drives or is in actual physical control of a vehicle.*

(12) *“Driver’s license” means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:*

(a) *any temporary license or instruction permit;*

(b) *the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;*

(c) *any nonresident’s driving privilege;*

(d) *a motorcycle endorsement; or*

(e) *a commercial driver’s license.*

(13) *“For hire” means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.*

(14) *“Gross vehicle weight” means the weight of a vehicle without load plus the weight of any load on the vehicle.*

(15) *“Highway” or “public highway” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.*

(16) *“Highway patrol officer” means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.*

(17) *“Implement of husbandry” means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner’s agricultural operations.*

(18) *"Light vehicle"* means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(19) (a) *"Manufactured home"* means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(b) *The term does not include a mobile home, as defined in 15-1-101 or this section, a housetrailer, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.*

(20) *"Manufacturer"* includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(21) *"Manufacturer's certificate of origin"* means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(22) *"Mobile home" or "housetrailer"* means a trailer or a semitrailer that is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and that is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer but that is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(23) *"Motor home"* means a motor vehicle:

(a) *designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;*

(b) *containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and*

(c) *providing at least four of the following types of facilities:*

(i) *cooking, refrigeration, or icebox;*

(ii) *self-contained toilet;*

(iii) *heating or air-conditioning, or both;*

(iv) *potable water supply, including a faucet and sink; or*

(v) *separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.*

(24) (a) *"Motorboat"* means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) *The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.*

(25) (a) *“Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.*

(b) *The term does not include motor carriers regulated under Title 69, chapter 12.*

(26) (a) *“Motorcycle” means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.*

(b) *The term does not include a tractor or a bicycle as defined in 61-8-102.*

(27) (a) *“Motor-driven cycle” means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.*

(b) *The term does not include a bicycle as defined in 61-8-102.*

(28) (a) *“Motor vehicle” means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state;*

(b) *The term does not include a bicycle as defined in 61-8-102.*

(29) *“New motor vehicle” means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.*

(30) *“Nonresident” means a person who is not a resident of this state.*

(31) (a) *“Off-highway vehicle” means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.*

(b) *The term does not include:*

(i) *vehicles designed primarily for travel on, over, or in the water;*

(ii) *snowmobiles; or*

(iii) *vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.*

(32) *“Owner” means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.*

(33) *“Operator” means a person who is in actual physical control of a motor vehicle.*

(34) *"Person"* means an individual, corporation, partnership, association, firm, or other legal entity. (35) *"Personal watercraft"* means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(36) *"Pole trailer"* means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(37) *"Police officer"* means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(38) (a) *"Quadricycle"* means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) *The term does not include golf carts.*

(39) *"Railroad"* means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(40) (a) *"Railroad train" or "train"* means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) *The term does not include streetcars.*

(41) *"Recreational vehicle"* includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(42) *"Registration decal"* means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(43) *"Registration receipt"* means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(44) *"Retail sale"* means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(45) *"Revocation"* means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(46) *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the

event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(47) (a) *“Sailboat” means a vessel that uses a sail and wind as its primary source of propulsion.*

(b) *The term does not include a canoe or kayak propelled by wind.*

(48) *“Semitrailer” means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.*

(49) *“Snowmobile” means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.*

(50) *“Special mobile equipment” means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.*

(51) (a) *“Sport utility vehicle” means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.*

(b) *The term does not include trucks having a manufacturer’s rated capacity of 1 ton or less.*

(52) (a) *“Stop”, when required, means complete cessation from movement.*

(b) *“Stop”, “stopping”, or “standing”, when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.*

(53) *“Street” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.*

(54) *“Suspension” means that the driver’s license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.*

(55) *“Temporary registration permit” means:*

(a) *a paper record produced and issued by the department, its authorized agent, a county treasurer, or a law enforcement officer to a person to whom ownership of a vehicle was transferred that, when mounted in the left-hand corner of a rear window of a motor vehicle or affixed as prescribed on a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle, authorizes the operation of the vehicle for a specified time period prior to registration under 23-2-512, 23-2-616, 23-2-804, or 61-3-303; or*

(b) *a durable license plate-style placard approved by the department and issued by an authorized agent of the department or a county treasurer to a person to whom ownership of a vehicle has been transferred that, when attached to the rear of the vehicle in a manner prescribed by the department, authorizes the*

operation of a motor vehicle for a specified time period prior to registration under 61-3-303.

(56) *“Traffic” means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.*

(57) *“Trailer” means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.*

(58) *“Transaction summary receipt” means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.*

(59) *“Travel trailer” means a trailer 45 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.*

(60) *“Truck” or “motortruck” means a motor vehicle designed, used, or maintained primarily for the transportation of property.*

(61) *“Truck tractor” means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.*

(62) *“Under the influence” has the meaning provided in 61-8-401.*

(63) *“Used motor vehicle” includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as “secondhand” within the ordinary meaning of that term.*

(64) *“Van” means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.*

(65) *“Vehicle” means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.*

(66) *“Vehicle identification number” means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.*

(67) *“Vessel” means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.*

(68) *“Wholesaler” means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer,*

semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 42. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles* for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile* registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, including, as pertinent to the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*:

(i) the manufacturer of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(ii) the manufacturer's designation of the style of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, *if applicable*, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* as shown by the manufacturer;

(vi) the distinctive license number assigned to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data consider to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to *motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles* that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, *motor vehicle* records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 43. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests — perfection — rights — procedure — fees. (1) (a) Except as provided in subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the fee

required by subsection (8), enter a voluntary security interest or lien against the electronic record of title for a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* upon receipt of a written acknowledgment by a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought.

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*.

(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against the electronic record of title for a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* that is subject to two security interests previously perfected under this section and the applicant has requested issuance of a certificate of title under 61-3-201, the department shall endorse on the face of the certificate of title, "NOTICE. This ~~motor~~ vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests is not required to be endorsed on the certificate.

(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles*, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(5) A secured party or lienholder who has a perfected security interest in a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and who fails to file a satisfaction of the security interest or lien within 21 days after receiving final payment is required

to pay the department \$25 for each day that the secured party or lienholder fails to file the satisfaction.

(6) Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* registered in this state, the department shall mail to the owner or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.

(8) (a) A fee must be paid to the department to file any security interest or other lien against a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*. The fee covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title.

(b) Beginning January 1, 2002, and ending June 30, 2011, the fee is \$8. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the ~~department of revenue~~ *state* for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2011, the fee is \$4 and must be deposited in the state general fund.

(9) A fee of \$10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The \$10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550. (Subsection (9) terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)"

Section 44. Section 61-3-106, MCA, is amended to read:

"61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity. (1) It is the duty of the sheriff of each county of the state and of the chief of police or commissioner of police of each city to make an immediate entry regarding each *theft or recovery of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* ~~theft or recovery~~ into the state automated stolen *motor vehicle* file maintained by the department on

the state's criminal justice information system. Failure on the part of any officer to make the immediate entry is considered ~~misfeasance~~ *malfeasance* in office and constitutes grounds for removal. Upon entry of the information, the state's criminal justice information system and the national crime information center must be allowed immediate access to the state automated stolen *motor* vehicle file. The department shall file reports of stolen and recovered motor vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles* reported to it from other states.

(2) The state automated stolen *motor* vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center.

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means:

(i) any constituted criminal investigative department or agency of the United States;

(ii) the state department of justice;

(iii) the state auditor's office;

(iv) a peace officer of the state or a political subdivision of the state; or

(v) a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* theft or motor vehicle insurance fraud under investigation, including an application for a policy;

- (ii) available policy premium payment records;
- (iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* involved in a specific motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* theft or motor vehicle insurance fraud."

Section 45. Section 61-3-107, MCA, is amended to read:

"61-3-107. Identification number for trailers, campers, and other motor vehicles. (1) A trailer, semitrailer, *pole trailer*, house trailer, or camper that does not have a manufacturer's or other identifying number on the trailer, semitrailer, *pole trailer*, house trailer, or camper must be assigned an identification number by the department.

(2) The department may not issue a certificate of ownership or a certificate of title or reissue a certificate of ownership or a certificate of title covering a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* files an application with the department, accompanied by a fee of \$5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a special identification number for the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* in the manner and form prescribed by the department.

(3) If the true identity of a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the *motor vehicle's, trailer's, semitrailer's, pole trailer's, camper's, motorboat's, personal watercraft's,*

sailboat's, or snowmobile's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the *motor* vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, accompanied by an application for a certificate of ownership or a certificate of title and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* in any certificate of ownership or a certificate of title that may be issued."

Section 46. Section 61-3-110, MCA, is amended to read:

"61-3-110. Contract rental price adjustment — not sale or security interest. In the case of a motor vehicle, trailer, ~~or~~ semitrailer, *pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, a transaction does not create a sale or security interest solely because it permits or requires that the rental price be adjusted either upward or downward under the agreement by reference to the amount realized upon the sale or other disposition of the motor vehicle, trailer, ~~or~~ semitrailer, *pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*. To the extent that a conflict exists, this section supersedes any other provision of law."

Section 47. Section 61-3-201, MCA, is amended to read:

"61-3-201. Certificate of title required — exclusions. (1) Except as provided in subsection (2), the owner of a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*.

(2) The following *motor* vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles* are exempt from the requirements of this part:

(a) a *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owned by the United States, unless the *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* is registered in this state;

(b) a *motor* vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owned by a nonresident of this state;

(d) a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* regularly engaged in the interstate transportation of ~~person~~ persons or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment *or a motor vehicle or trailer designed and used to apply fertilizer to agricultural land*;

(h) a self-propelled wheelchair or tricycle used by a person with a disability; or

(i) a dolly or converter gear.

(3) The certificate of title is valid until canceled by the department upon a transfer of any interest shown in the certificate of title, and annual renewal is not needed."

Section 48. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of title — issuance — contents — joint ownership. (1) A certificate of title issued by the department must contain:

(a) the date issued;

(b) the name and address of the owner;

(c) the mileage disclosed by the transferor when ownership of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was transferred, including a notation that the record mileage is actual, not actual, or exceeds mechanical limits;

(d) the name and address of each secured party and lienholder, in the order of priority and perfection or, if the application was based on a surrendered certificate of title, in the order that the names and addresses are shown on the certificate of title;

(e) the title number assigned to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(f) the name of the jurisdiction in which the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owner resides; the words "certificate of title"; the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* identification number; the manufacturer's designated model year of manufacture, make, and model of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*; and any required or carried-forward brands;

(g) the unique transaction record number, if available and assigned by the department; and

(h) any other data that the department prescribes.

(2) A certificate of title issued by the department is valid until canceled by the department upon:

(a) a transfer, in the electronic record, of title of any ownership interest shown in the certificate of title;

(b) notice received by the department of the surrender of the certificate of title to a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* ~~title-issuing to a title-issuing~~ agency of another jurisdiction for an issuance of a title in that jurisdiction;

(c) the issuance of a duplicate certificate of title; or

(d) a determination by the department that the certificate of title contains a substantial error or that the person who requested issuance of the certificate of title paid the required fees and taxes with an insufficient funds check.

(3) (a) Whenever the conditions described in subsection (2)(d) occur, the department shall:

(i) give prompt written notice of the cancellation of the certificate of title to any owner, secured party, or lienholder of record; and

(ii) stop any change to the electronic record of title.

(b) The action taken by the department under subsection (3)(a) prevents the transfer of any ownership interest until the error is corrected or the fees and taxes have been paid.

(4) If the names and addresses of more than one owner are listed on the certificate of title, joint ownership with right of survivorship, and not as tenants in common, is presumed.”

Section 49. Section 61-3-204, MCA, is amended to read:

“61-3-204. Replacement certificate of title — application. (1) If a certificate of title is lost, stolen, destroyed, mutilated, or becomes illegible or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner, as shown on the electronic record of title, may apply for and request the department to issue a replacement certificate of title. The application must include satisfactory evidence of the facts requiring the replacement certificate of title and be accompanied by a fee of \$10. Of the \$10 fee, \$5 must be deposited in the state general fund in accordance with 15-1-504, and the remaining \$5 must be ~~forwarded to the department for deposit~~ *deposited* in the motor vehicle information technology system account provided for in 61-3-550.

(2) Each replacement certificate of title issued by the department must contain the following statement: “This replacement voids any previously issued title.””

Section 50. Section 61-3-205, MCA, is amended to read:

“61-3-205. Transfer of ownership of vehicles by insurance company. (1) When an insurance company or its adjuster has taken possession of a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* as a result of settling an insurance claim and transfers ownership of the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, it shall deliver to the transferee at the time of transfer a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.”

Section 51. Section 61-3-206, MCA, is amended to read:

“61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of title the odometer reading at the time of transfer or, if the certificate of title does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print the seller’s name on the written statement, and that contains the following information:

- (a) the odometer reading at the time of transfer;
- (b) the date of transfer;
- (c) the seller’s name and current address;
- (d) the purchaser’s name and current address;
- (e) the *motor* vehicle year, make, model, body style, and identification number;
- (f) one of the following statements or certification:
 - (i) a certification by the seller that, to the best of the seller’s knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;
 - (ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or
 - (iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the *motor* vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing the purchaser’s name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

- (a) a motor vehicle that is 10 years old or older;
 - (b) a vehicle, *trailer, semitrailer, pole trailer, camper, or sailboat* that is not self-propelled;
 - (c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the *motor* vehicle has been used as a demonstrator;
 - (d) a *motor* vehicle having a gross weight rating of more than 16,000 pounds;
- or
- (e) a *motor* vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and

preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains.”

Section 52. Section 61-3-208, MCA, is amended to read:

“61-3-208. Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title that assigns the prior owner’s interest in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* to the applicant, the department may issue a certificate of title if subsection (2) is complied with.

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:

(i) include the facts and circumstances through which the applicant acquired ownership and possession of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(iii) state that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a ~~boat~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile*, and the loss of the certificate of title must be established by the applicant to the department’s satisfaction.

(ii) The applicant shall certify in the affidavit that the value of the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile* for which the application is made is \$500 or less as indicated by the average trade-in or wholesale value of the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile* as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile*, according to the applicant’s knowledge and belief.

(iii) The applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile* for which the application is being made, as determined by the surety company. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile* and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a

defect in or undisclosed security interest upon the right, title, and interest of the applicant in the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile*.

(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* is no longer required to have a certificate of title in this state."

Section 53. Section 61-3-210, MCA, is amended to read:

"61-3-210. Definitions. As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a ~~common~~ truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column, and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger *motor* vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a *motor* vehicle, or any part of a *motor* vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of title issued by the department for a salvage vehicle that may be used to retitle the *motor* vehicle.

(7) "Salvage vehicle" means a *motor* vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or ~~other~~ *another* person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

~~(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle."~~

Section 54. Section 61-3-211, MCA, is amended to read:

"61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a *motor* vehicle that is less than 5 years of age *and* that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the *motor* vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of \$5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2)."

Section 55. Section 61-3-212, MCA, is amended to read:

"61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the *motor* vehicle and the salvage certificate, if one has been issued, or the certificate of title, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the *motor* vehicle to a department employee or designated peace officer for inspection, as provided in 61-3-223. An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the *motor* vehicle to verify the identity of the *motor* vehicle.

(b) The inspector shall verify that the component parts used to rebuild the *motor* vehicle are evidenced by traceable receipts or bills of sale and that there are no indications that the *motor* vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the *motor* vehicle on the roads and highways of this state, the owner shall apply for a new certificate of title by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee required in 61-3-203, the department shall issue a new certificate of title with the words "rebuilt salvage" on the face of the certificate of title.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a temporary registration permit has been issued as provided in subsection (1)."

Section 56. Section 61-3-216, MCA, is amended to read:

"61-3-216. Certificates of title — application — contents — issuance.

(1) The owner of a *motor* vehicle, *trailer*, *semitrailer*, *pole trailer*, *camper*, *motorboat*, *personal watercraft*, *sailboat*, or *snowmobile* shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card, the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card;

(b) a description of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, including, as available and pertinent to the vehicle:

(i) the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading, *if applicable*, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, *if applicable*, as determined by the manufacturer;

(iv) whether the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was new or used at the time of transfer; and

(v) ~~if the vehicle is~~ for a trailer operating intrastate, its declared weight;

(c) the date on which the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was purchased by or was transferred to the applicant, the name and address of the person from whom the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the ~~vehicle's~~ current registration receipt *for the motorboat, personal watercraft, sailboat, or snowmobile*, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, ~~or~~ sailboat, *or snowmobile* from the immediate prior owner to the applicant."

Section 57. Section 61-3-217, MCA, is amended to read:

"61-3-217. Certificate of title — duties — examination of application — records check — incomplete application. (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

(i) review the application and documents;

(ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

(a) the records of *motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles* maintained by the department under 61-3-101;

(b) the reported stolen *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* databases maintained on the state's criminal justice information network and by the national crime information center; and

(c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the electric record of title for the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) Except as provided in 61-3-342, the department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department."

Section 58. Section 61-3-218, MCA, is amended to read:

"61-3-218. Certificate of title — issuance — delivery. (1) Except as provided in subsection (2), if a person who applied for a certificate of title also requested the issuance of the certificate of title as provided in 61-3-216(2)(f)(i), upon receipt of the application and all supporting documents and after an examination and determination that the application is complete and regular, the department shall issue a certificate of title of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and shall mail the certificate of title to the owner.

(2) If a person to whom a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was transferred has not satisfied the titling and registration provisions of this chapter or, if applicable, the registration provisions of Title 23, chapter 2, part 5 or 6, within the 20-day period provided in 61-3-220(3) and the secured party or lienholder pays the title fee required in 61-3-203, the department may mail a certificate of title to the secured party or lienholder upon request of the secured party or lienholder.

(3) (a) A *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* owner who requested the delayed issuance of a certificate of title under 61-3-216(2)(f)(ii), in the initial application for a certificate of title, may submit a request for the issuance of the certificate of title to the department, its authorized agent, or a county treasurer in a manner prescribed by the department. Upon receipt, the department shall issue a

certificate of title for the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and mail the certificate of title to the owner.

(b) A title fee may not be demanded from the owner or collected by the department, its authorized agent, or a county treasurer for a certificate of title requested or issued under subsection (3)(a)."

Section 59. Section 61-3-219, MCA, is amended to read:

"61-3-219. Refusal to issue certificate of title. The department may refuse to issue a certificate of title if any required fee is not paid or if the department has reasonable grounds to believe that:

- (1) the applicant is not the owner of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;
- (2) the application contains a false or fraudulent statement;
- (3) the applicant failed to furnish any information or document required by the department; or
- (4) based on the check performed under 61-3-217(2), the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* has been reported as stolen."

Section 60. Section 61-3-220, MCA, is amended to read:

"61-3-220. Certificate of title — voluntary transfer — timeliness — penalty. (1) Upon the voluntary transfer of any interest in a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* for which a certificate of title was issued under the provisions of this chapter, the owner whose interest is to be transferred shall:

(a) authorize, in writing and on a form prescribed by the department, its authorized agent, or a county treasurer, to enter the transfer of the owner's interest in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* to the transferee on the electronic record of title maintained under 61-3-101; or

(b) execute a transfer in the appropriate space provided on the certificate of title issued to the owner and deliver the assigned certificate of title to:

- (i) the transferee at the time of delivery of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*; or
- (ii) the department, its authorized agent, or a county treasurer if an application for a certificate of title has been completed by the transferee and accompanies the assigned certificate of title.

(2) The transferor's signature on the certificate of title; or the form authorizing transfer of interest upon the electronic record of title; must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee or authorized agent of the department, or a notary public.

(3) Except as provided in sections 23-2-513, 23-2-619, 23-2-818, or 61-4-111, the person to whom an interest in a motor vehicle has been transferred shall:

(a) execute an application for a certificate of title in the space provided on the assigned certificate of title or as prescribed by the department; and

(b) within 20 days after the interest in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* was transferred to the person, mail or deliver the assigned certificate of title or application to the county treasurer of the person's county of residence or, as permitted by the department, its authorized agent.

(4) If the person to whom an interest in a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* has been transferred fails to submit the application for a certificate of title to the department's authorized agent or a county treasurer within the 20-day grace period described in subsection (3), a late penalty of \$10 must be imposed against the transferee. The penalty must be paid by the transferee to the county treasurer when the application for a certificate of title is finally submitted by the transferee or before the transferee may register the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* in this state. The penalty is in addition to the fees otherwise provided by law.

(5) If the transferee does not apply for a certificate of title within the 20-day grace period, a secured party or lienholder of record may pay the fees for the transfer of title and for filing a voluntary security interest or lien. The secured party or lienholder is not liable for the late penalty imposed in subsection (4) or for registration fees, taxes, or fees in lieu of tax on the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.*"

Section 61. Section 61-3-221, MCA, is amended to read:

"61-3-221. Involuntary transfer. (1) (a) An involuntary transfer of title to or any interest in a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* may occur by operation of law through inheritance, devise, bequest, order in bankruptcy or insolvency, execution sale, or repossession upon default in the performance of the terms of a lease, executory sales contract, or security agreement or in any other manner other than by voluntary act of the person whose title or interest is transferred. Upon the involuntary transfer, the executor, administrator, receiver, trustee, sheriff, secured party, or other representative or successor in interest of the person whose interest is transferred shall send to the department:

(i) an application for a certificate of title; and

(ii) a verified or certified statement of the transfer of interest or a transfer statement, as defined in 30-9A-619.

(b) The statement of transfer of interest must state the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process or procedure creating the transfer, and other information requested by the department. A transfer statement submitted under this section must meet the requirements of 30-9A-619. Evidence and instruments that are required by law in order to effect a transfer of legal or equitable title to or an interest in chattels must be submitted with the statement.

(c) Except as provided in subsection (2), if the department determines that the transfer is regular and that all legal requirements have been complied with, the department shall send notice of the intended transfer to the owner, conditional sales vendor, lessor, mortgagee, and other lienholder, as shown in the department's records. Deposit in the U.S. mail of the notice, postage prepaid,

addressed to the person at the respective address shown in the department's records satisfies the notice required by this section. Not less than 5 days after sending the notice, the department shall issue a new certificate of title to the transferee.

(2) (a) Except as provided in subsection (2)(b), if an interest in a *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* that is not registered in this state is involuntarily transferred to a person in this state, the person to whom the interest is transferred shall follow the procedure provided in subsection (1).

(b) In lieu of the statement required in subsection (1), the department may accept an affidavit of repossession as executed by the person seeking the involuntary transfer.

(3) The department is not required to send notice for a transfer of interest occurring under subsection (2)."

Section 62. Section 61-3-222, MCA, is amended to read:

"61-3-222. Surviving spouse or heir — small estates. (1) Subject to the limitations of Title 72, chapter 3, part 11, the surviving spouse or other heir may secure transfer of a decedent's ownership interests in one or more motor vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles* for which a certificate of title was issued under this chapter if:

(a) the combined value of the interests does not exceed \$20,000;

(b) the decedent did not leave other property that requires the procuring of letters of administration or letters testamentary; and

(c) the decedent did not by execution of a will otherwise bequeath the property.

(2) The person seeking transfer of the decedent's interests under this section shall file an affidavit with the department setting forth the fact of survivorship, the name and address of any other heirs, and any other facts determined necessary to entitle the person to the transfer.

(3) If the department determines that the transfer is regular and that all legal requirements have been met, the department shall issue a certificate of title, subject to any security interests shown by the department's records, to the surviving spouse or other heir."

Section 63. Section 61-3-223, MCA, is amended to read:

"61-3-223. Salvage vehicles. (1) A salvage vehicle for which a certificate of title is sought must be inspected for the vehicle identification number to authenticate the identity of the *motor* vehicle before an electronic record of title can be created or a certificate of title can be issued. The inspection does not attest to the roadworthiness or safety condition of the *motor* vehicle and must be performed by an authorized employee or an authorized agent of the department or by a peace officer designated by the department.

(2) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(3) The department shall collect an inspection fee of \$18.50 from the person requesting the inspection for each salvage vehicle inspected. The fees collected under this section must be distributed as follows:

(a) \$5 must be deposited in the state general fund; and

(b) \$13.50 must be deposited in an account in the state special revenue fund to be appropriated only for the inspection of salvage vehicles.

(4) (a) A person authorized to inspect salvage vehicles may seize and hold a vehicle:

(i) if the person has probable cause to believe that the *motor* vehicle has been stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that has a vehicle identification number that does not conform with the vehicle identification number on the certificate of title.

(b) A seized *motor* vehicle must be held until the identity of the *motor* vehicle is established and arrangements are made for its lawful disposition. A person authorized to inspect salvage vehicles may use any means necessary to identify a *motor* vehicle by its vehicle identification number or numbers.

(5) The department may not create an electronic record of title or issue a certificate of title for a salvage vehicle until the identity of the *motor* vehicle is established.

(6) The department may adopt rules for the inspection of salvage vehicles.”

Section 64. Section 61-3-224, MCA, is amended to read:

“61-3-224. Temporary registration permit. (1) A county treasurer or a law enforcement officer may issue a temporary registration permit under the provisions of 61-3-317. A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342.

(2) An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter.

(3) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-619, 23-2-818, 61-4-111, or 61-4-112.

(4) A temporary registration permit issued under subsections (1) through (3) must contain the following information:

(a) a temporary registration permit control number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the *motor* vehicle, *trailer*, *semitrailer*, *pole trailer*, *camper*, *motorboat*, *personal watercraft*, *sailboat*, or *snowmobile*, including year, make, model, and vehicle identification number, the name and address of the person from whom ownership of the *motor* vehicle, *trailer*, *semitrailer*, *pole trailer*, *camper*, *motorboat*, *personal watercraft*, *sailboat*, or *snowmobile* was transferred, the name and residence address of the person to whom ownership of the *motor* vehicle, *trailer*, *semitrailer*, *pole trailer*, *camper*, *motorboat*, *personal watercraft*, *sailboat*, or *snowmobile* has been transferred, and the date of transfer.”

Section 65. Section 61-3-301, MCA, is amended to read:

“61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, a person may not operate a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* upon the public highways of Montana unless

the *motor vehicle, trailer, semitrailer, or pole trailer* is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the *motor vehicle, trailer, semitrailer, or pole trailer*, each securely fastened to prevent it from swinging and unobstructed from plain view, except that *motor vehicles, trailers, semitrailers, or pole trailers* authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a *motor vehicle, trailer, semitrailer, or pole trailer* at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) A person may not purchase or display on a *motor vehicle, trailer, semitrailer, or pole trailer* a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence at the time of application for registration. However, the owner of a *motor vehicle, trailer, semitrailer, or pole trailer* requiring a license plate on a *motor vehicle, trailer, semitrailer, or pole trailer* used in the public transportation of persons or property may make application for the license in any county through which the *motor vehicle, trailer, semitrailer, or pole trailer* passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the *motor vehicle, trailer, semitrailer, or pole trailer* in any other county of the state.

(3) It is unlawful to:

(a) display license plates issued to one *motor vehicle, trailer, semitrailer, or pole trailer* on any other *motor vehicle, trailer, or semitrailer, or pole trailer* unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of number plates issued under 61-3-332(4)(a) or special license plates issued under 61-3-332(10) or 61-3-421 more than 18 months after a new design of number plates or special license plates has been issued, except as provided in 61-3-332(4)(c) and (4)(d), 61-3-448, or 61-3-468.

(4) This section does not apply to a *motor vehicle, trailer, semitrailer, or pole trailer* exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under as provided in 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601.

(6) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a *motor vehicle, trailer, semitrailer, or pole trailer* equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a *motor vehicle, trailer, semitrailer, or pole trailer*."

Section 66. Section 61-3-302, MCA, is amended to read:

"61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a *motor vehicle, trailer, semitrailer, or pole trailer* under a license issued by any other state than Montana."

Section 67. Section 61-3-303, MCA, is amended to read:

“61-3-303. Registration — process — fees. (1) A Montana resident who owns a motor vehicle, *trailer, semitrailer, or pole trailer* operated or driven upon the public highways of this state shall register the motor vehicle, *trailer, semitrailer, or pole trailer* in the office of the county treasurer in the county where the owner permanently resides or, if the *motor vehicle, trailer, semitrailer, or pole trailer* is owned by a corporation or used primarily for commercial purposes, in the county where the *motor vehicle, trailer, semitrailer, or pole trailer* is permanently assigned.

(2) (a) Except as provided in subsection (3), the county treasurer shall register any *motor vehicle, trailer, semitrailer, or pole trailer* for which:

(i) as of the date that the *motor vehicle, trailer, semitrailer, or pole trailer* is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the *motor vehicle, trailer, semitrailer, or pole trailer* as provided under 61-3-101.

(b) To register a *motor vehicle, trailer, semitrailer, or pole trailer*, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle, *trailer, semitrailer, or pole trailer* for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the *motor vehicle, trailer, semitrailer, or pole trailer* owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, *trailer, semitrailer, or pole trailer* for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle, *trailer, semitrailer, or pole trailer* at the time of its registration.

(5) A person who seeks to register a motor vehicle, except a mobile home, ~~or a manufactured home as those terms are defined in 15-1-101(1)~~, *trailer, semitrailer, or pole trailer*, shall pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the ~~motor vehicle~~ fees in lieu of tax or registration fees under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562 imposed against the *motor vehicle, trailer, semitrailer,*

or *pole trailer* for the current year of registration and the immediately previous year; and

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(d) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the *motor vehicle, trailer, semitrailer, or pole trailer* to the owner unless the owner makes the payments required by subsection (5). Except as provided in ~~61-3-560 through 61-3-321(2)~~ or 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) except as provided in subsection (9), the immediately preceding year if the *motor vehicle, trailer, semitrailer, or pole trailer* was not registered or operated on the highways of the state, regardless of the period of time since the *motor vehicle, trailer, semitrailer, or pole trailer* was previously registered or operated.

(7) The department may make full and complete investigation of the registration status of the *motor vehicle, trailer, semitrailer, or pole trailer*. A person seeking to register a *motor vehicle, trailer, semitrailer, or pole trailer* under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, *semitrailer, or pole trailer*, ~~or semitrailer~~ that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is owned by the same person who registered the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer*. Once registered, a ~~vehicle described in this subsection (9)(a)~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is registered permanently unless ownership ~~of the vehicle~~ is transferred.

(b) Whenever ownership of a ~~vehicle described in subsection (9)(a)~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is transferred, the new owner is required to register the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the

department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.”

Section 68. Section 61-3-311, MCA, is amended to read:

“61-3-311. Registration — annual renewal — time periods. (1) Registration must be renewed annually, and registration fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and must be renewed annually upon payment of all required fees to the county treasurer or the department’s agent not later than February 15 of each year. If the ownership of a motor vehicle, *trailer, semitrailer, or pole trailer* is transferred during the registration year, the new owner shall apply for a certificate of title and register the motor vehicle, *trailer, semitrailer, or pole trailer* as provided by this chapter.

(2) The department, its authorized agent, or a county treasurer may not renew the registration of a *motor vehicle, trailer, semitrailer, or pole trailer* ~~whose~~ *for which* ownership has been transferred and that was originally registered under the provisions of 61-3-342(3) unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the *motor vehicle, trailer, semitrailer, or pole trailer* has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.”

Section 69. Section 61-3-312, MCA, is amended to read:

“61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-311(1), 61-3-314, ~~61-3-321(2)~~, 61-3-318, 61-3-526, ~~61-3-560~~, 61-3-562, and 61-3-721, the registration of a *motor vehicle, trailer, semitrailer, or pole trailer* under this chapter expires on December 31 of each year and must be renewed annually upon payment of registration fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. A registration receipt is valid only during the registration year for which it is issued.

(2) The owner of a *motor vehicle, trailer, semitrailer, or pole trailer* registered under the provisions of this section may operate the *motor vehicle, trailer, semitrailer, or pole trailer* between January 1 and February 15 without displaying the registration decal of the current year if, during the period, the owner displays upon the *motor vehicle, trailer, semitrailer, or pole trailer* the number plates or plate assigned for the previous year.”

Section 70. Section 61-3-313, MCA, is amended to read:

“61-3-313. ~~Vehicles~~ Motor vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316, “*motor vehicle*” means a motor vehicle, ~~as defined in 61-1-102~~, that is subject to annual registration in this state except:

(1) *motor vehicles* owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

- (3) *motor* vehicles that are registered in accordance with or subject to 61-3-411 or 61-3-458(3)(b);
- (4) trucks exceeding a 1-ton rated capacity;
- (5) trailers, semitrailers, *pole trailers*, tractors, and buses;
- (6) special mobile equipment, ~~as defined in 61-1-104~~ *a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader*;
- (7) motor vehicles registered as part of a fleet under 61-3-318; and
- (8) apportionable *motor* vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 71. Section 61-3-314, MCA, is amended to read:

“61-3-314. Registration period. (1) Except as provided in 61-3-315, each *motor* vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There are 12 registration periods, each of which commences on the first day of a calendar month. The periods are:

- | | |
|---------------------------------------|--------------|
| (a) January 1 through January 31 | 1st period |
| (b) February 1 through February 28/29 | 2nd period |
| (c) March 1 through March 31 | 3rd period |
| (d) April 1 through April 30 | 4th period |
| (e) May 1 through May 31 | 5th period |
| (f) June 1 through June 30 | 6th period |
| (g) July 1 through July 31 | 7th period |
| (h) August 1 through August 31 | 8th period |
| (i) September 1 through September 30 | 9th period |
| (j) October 1 through October 31 | 10th period |
| (k) November 1 through November 30 | 11th period |
| (l) December 1 through December 31 | 12th period” |

Section 72. Section 61-3-315, MCA, is amended to read:

“61-3-315. Reregistration on anniversary date — department to make rules — early reregistration. (1) A *motor* vehicle that has been registered for any of the periods designated in 61-3-314 must be reregistered for the same period on or before the anniversary date of the initial registration unless that period is changed as provided in subsections (2) and (4). The anniversary date for reregistration is the last day of the month for the designated registration period.

(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in ~~61-3-560 and 61-3-561~~ *61-3-321(2)*, may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the *motor* vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as

provided in ~~61-3-560 and 61-3-561~~ 61-3-321(2), may permanently register the motor vehicle as provided in 61-3-562. The registration remains in effect until ownership of the *motor* vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the *motor* vehicles. The rules adopted by the department pursuant to this section must also allow early reregistration of motor vehicles that are subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in ~~61-3-560 and 61-3-561~~ 61-3-321(2), when an owner of a motor vehicle presents extenuating circumstances.

(4) The department shall provide for simultaneous registration of multiple *motor* vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register the *motor* vehicles."

Section 73. Section 61-3-316, MCA, is amended to read:

"61-3-316. New registrations under staggered registration. A *motor* vehicle that is registered for the first time in this state must be assigned a registration period corresponding to when the *motor* vehicle is first registered in this state. Except as provided in 61-3-315, the registration period for a *motor* vehicle must remain the same from year to year."

Section 74. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred *motor* vehicle — grace period — penalty — display of proof of purchase. (1) Except as otherwise provided in this section, the new owner of a transferred motor vehicle, *trailer, semitrailer, or pole trailer* has a grace period of 20 calendar days from the date of purchase to make application for a certificate of title and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the *motor* vehicle, *trailer, semitrailer, or pole trailer* were being registered for the first time in that registration year.

(2) The new owner of a *motor* vehicle, *trailer, semitrailer, or pole trailer* described in 61-3-303(9) shall make application and pay the registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously.

(3) If the motor vehicle, *trailer, semitrailer, or pole trailer* was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the *motor* vehicle, *trailer, semitrailer, or pole trailer* upon the streets and highways of this state without a current registration receipt or registration decal during the 20-day period if at all times during that period, a temporary registration permit, obtained from the county treasurer or a law enforcement officer as authorized by the department, is clearly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the *motor* vehicle, *trailer, semitrailer, or pole trailer*, the placard is attached to the rear of the *motor* vehicle, *trailer, semitrailer, or pole trailer*.

(4) Registration fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(5) Failure to make application for a certificate of title within the time provided in this section subjects the purchaser to a penalty of \$10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."

Section 75. Section 61-3-318, MCA, is amended to read:

"61-3-318. Fleet registration period. (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its ~~motor vehicles~~ *fleet* for a 6-month period, commencing from the date of original registration.

(b) A *motor* vehicle remaining in the fleet at the end of a 6-month period must be reregistered for a minimum of 12 months.

(2) As used in this section, "fleet" means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet."

Section 76. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, reregistration of motor vehicles, *snowmobiles, watercraft, trailers, and semitrailers, and pole trailers* ~~in accordance with this chapter, as follows provided in subsections (2) through (18):~~

(2) (a) *Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.*

(b) *The following vehicles are exempt from the registration fee imposed in this subsection (2):*

(i) *light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520;*

(ii) *a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;*

(iii) *a light vehicle registered under 61-3-456.*

(c) *The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.*

~~(a)(d) The annual registration fee for light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17; trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:~~

~~(i) if the vehicle is 4 or less years old, \$217;~~

~~(ii) if the vehicle is 5 through 10 years old, \$87; and~~

~~(iii) if the vehicle is 11 or more years old, \$28;~~

~~(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.~~

~~(b)(3)~~ (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of \$61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of \$148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner. ~~trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.~~

~~(e)(4)~~ The annual registration fee for motor vehicles ~~registered~~ owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

~~(i)(a)~~ 2,850 pounds and over, \$10; and

~~(ii)(b)~~ under 2,850 pounds, \$5;.

~~(d)(5)~~ (a) The registration fee for off-highway vehicles ~~registered pursuant to 23-2-817, \$9 in calendar year 2004 and, in each subsequent year, \$19.25 is~~ \$61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the fee in lieu of property tax; and

(vii) other information that the department may require.

(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

~~(e)(6)~~ The annual registration fee for ~~light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks, buses, and logging trucks in excess of 1 ton, \$18.75 in calendar year 2004 and, in each subsequent year, \$22 is~~ \$22.75;.

~~(f)~~ logging trucks less than 1 ton, \$23.75;

~~(g)(7)~~ (a) motor homes, \$22.25; The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

~~(h)(8) (a) The registration fee for motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25 registered for use on public highways is \$53.25, and the registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50. This fee is~~

(b) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of \$16 must be collected for the registration of each motorcycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

~~(k)(9) (a) The registration fee for travel trailers under 16 feet in length, \$11.75 is \$72 and the registration fee for travel trailers 16 feet in length or longer is \$152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.~~

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

~~(l) recreational vehicles, \$3.50 in calendar year 2004 and, in each subsequent year, \$9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.~~

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be

accompanied by the appropriate registration fee. The owner of a motorboat, a sailboat, personal watercraft, or a motorized pontoon shall pay a one-time fee as follows:

(i) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(ii) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(iii) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11)(a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is \$60.50.

(b) If a snowmobile is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, the business is assessed:

(i) a fee of \$40.50 in the first year of registration; and

(ii) if the business reregisters the snowmobile for a second year, a fee of \$20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

~~*(2)(a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.*~~

~~*(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.*~~

~~*(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$5 in calendar year 2004 and, in each subsequent year, \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.*~~

~~*(4)(12) A fee of \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.*~~

~~*(5)(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.*~~

~~*(6)(a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for*~~

~~transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.~~

~~(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):~~

~~(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.~~

~~(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.~~

~~(b) The following vehicles are not subject to the fee:~~

~~(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;~~

~~(ii) off-highway vehicles registered pursuant to 23-2-817; and~~

~~(iii) vehicles bearing license plates described in 61-3-458(3)(d).~~

~~(8)(14) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335. When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:~~

~~(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;~~

~~(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:~~

~~(i) if the vehicle is 4 years old or less, \$195.75;~~

~~(ii) if the vehicle is 5 years old through 10 years old, \$65.75; and~~

~~(iii) if the vehicle is 11 years old or older, \$6.75;~~

~~(c) motor homes:~~

~~(i) less than 2 years old, \$250.50;~~

~~(ii) 2 years old and less than 5 years old, \$192.25;~~

~~(iii) 5 years old and less than 8 years old, \$100.50; and~~

~~(iv) 8 years old and older, \$65.50;~~

~~(d) motorcycles and quadricycles registered for use on the public highways, \$42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, \$103.25. This fee is a one-time fee, except upon transfer of ownership.~~

~~(e) travel trailers under 16 feet in length, \$50.50, and travel trailers 16 feet in length or longer, \$130.50. This fee is a one-time fee, except upon transfer of ownership.~~

~~(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, \$52. This fee is a one-time fee, except upon transfer of ownership.~~

~~(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, \$139. This fee is a one-time fee, except upon transfer of ownership.~~

~~(9)~~(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(10)~~(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) *The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.*

~~(11)~~(18) (a) Unless a person exercises the option in subsection ~~(11)(b)~~ (18(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. *This fee must be accounted for and transmitted separately from the registration fee.* The fee must be deposited in *an account in the state general special revenue fund* to be used for state parks, for fishing access sites, and for the operation of state-owned facilities ~~as provided in 15-1-122(3)(e)(vii).~~ *Of the \$4 fee, the department shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.*

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection ~~(11)(a)~~ (18)(a). If a written election is made, the fee may not be collected.

(19) *This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."*

Section 77. Section 61-3-322, MCA, is amended to read:

"61-3-322. Registration receipts — issuance. (1) Upon completion of the registration process, the county treasurer shall issue a registration receipt to the owner of the *motor vehicle, trailer, semitrailer, or pole trailer*.

(2) The registration receipt must contain the name and address of *the owner* of the *motor vehicle, trailer, semitrailer, or pole trailer* ~~owner~~, the license plate number assigned to the *motor vehicle, trailer, semitrailer, or pole trailer*, sufficient information to identify the registered *motor vehicle, trailer, semitrailer, or pole trailer* and determine its registration date and period of registration, and any additional information required by rule.

(3) The registration receipt must at all times be carried in the *motor vehicle, trailer, semitrailer, or pole trailer* to which it refers or must be carried by the person driving or in control of the *motor vehicle, trailer, semitrailer, or pole trailer*, who shall display it upon demand of a peace officer or any officer or employee of the department or the department of transportation."

Section 78. Section 61-3-323, MCA, is amended to read:

"61-3-323. Definitions. As used in 61-3-323 through 61-3-325, unless the context requires otherwise, the following definitions apply:

(1) "Domicile" means the county in which a motor vehicle is most frequently used, dispatched, or controlled.

(2) "Fleet" means 100 or more motor vehicles, *trailers, semitrailers, or pole trailers* owned or leased by a person operating the *motor vehicles, trailers, semitrailers, or pole trailers* in this state."

Section 79. Section 61-3-324, MCA, is amended to read:

“61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of transportation to register the fleet annually through the department of transportation in lieu of registering each motor vehicle, *trailer, semitrailer, or pole trailer* in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of transportation prior to November 1 of each year;

(b) include a list of the motor vehicles, *trailers, semitrailers, or pole trailers* in the fleet;

(c) include the current registration receipt for each motor vehicle, *trailer, semitrailer, or pole trailer*; and

(d) include any other relevant information required by the department of transportation.

(3) A motor vehicle, *trailer, semitrailer, or pole trailer* may be added to the fleet.

(4) A motor vehicle, *trailer, semitrailer, or pole trailer* may be removed from a fleet if the owner of the fleet surrenders to the department of transportation the current registration receipt and the license plate for the *motor vehicle, trailer, semitrailer, or pole trailer* no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why ~~he~~ *the owner* is not able to surrender the receipt or license plate.”

Section 80. Section 61-3-325, MCA, is amended to read:

“61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition. (1) Any motor vehicle, *trailer, semitrailer, or pole trailer* in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of transportation shall compute fees and taxes due on each motor vehicle, *trailer, semitrailer, or pole trailer* in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of transportation shall also collect a registration fee of \$7.50 for each motor vehicle, *trailer, semitrailer, or pole trailer* in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain \$4.50 of each registration fee for administrative costs and forward the remaining \$3 to the state treasurer for deposit in the general fund.

(c) All fees and taxes must be paid no later than February 15 each year.”

Section 81. Section 61-3-331, MCA, is amended to read:

“61-3-331. Assignment of number plates. The county treasurer shall, at the time of issuing a registration receipt under 61-3-322, assign ~~such~~ *the* motor vehicle, *trailer, semitrailer, or pole trailer* a distinctive number, ~~viz.,~~ *which is* the license plate number, and deliver to the applicant two license plates, as received from the department, which ~~shall must~~ bear ~~such the~~ distinctive numbers. The department shall ship ~~said~~ license plates to ~~the various county treasurers by freight,~~ *each county treasurer* so that they will be received by the county treasurer on or before January 1 of each year.”

Section 82. Section 61-3-332, MCA, is amended to read:

“61-3-332. Number plates. (1) A motor vehicle, *trailer, semitrailer, or pole trailer* that is driven *or operated* upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters “MC” or “CYCLE”;

(c) trucks, bearing the letter “T” or the word “TRUCK”;

(d) trailers, bearing the letters “TR” or the word “TRAILER”;

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter “D” or the word “DEALER”;

(f) dealers of used motor vehicles only, including trucks, ~~and~~ trailers, *semitrailers, and pole trailers*, bearing the letters “UD” or the letter “U” and the word “DEALER”;

(g) dealers of motorcycles or quadricycles, bearing the letters “MCD” or the letters “MC” and the word “DEALER”;

(h) dealers of trailers, ~~or~~ semitrailers, *or pole trailers*, bearing the letters “DTR” or the letters “TR” and the word “DEALER”; and

(i) dealers of recreational vehicles, bearing the letters “RV” or the letter “R” and the word “DEALER”.

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles, *trailers, semitrailers, or pole trailers* must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in ~~61-3-527 or~~ 61-3-315 and 61-3-562 and *motor* vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the *motor* vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered *motor* vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section; and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles, *as described in subsection (2)*, before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and ~~61-3-560~~ 61-3-321(2), may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the *light* vehicle is permanently registered.

(5) For passenger *motor* vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the *motor* vehicle, *as described in subsection (2)*, must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles, *trailers, semitrailers, or pole trailers* and motor vehicles, *trailers, semitrailers, or pole trailers* that are exempt from the registration fee as provided in ~~61-3-560(2)(a)~~ 61-3-321, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For *motor* vehicles, *trailers, semitrailers, or pole trailers* owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For *motor* vehicles, *trailers, semitrailers, or pole trailers* that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, *trailers, semitrailers, or pole trailers* of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the

department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger *motor* vehicle, truck, trailer, *semitrailer*, *pole trailer*, motorcycle, or quadricycle may be transferred only to a replacement passenger *motor* vehicle, truck, trailer, *semitrailer*, *pole trailer*, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer* owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer*, and must be removed upon sale or other disposition of the *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer*.

(11) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. If the *motor* vehicle to which the license plate is attached is permanently registered, the owner of the *motor* vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the *motor* vehicle.

(12) The provisions of this section do not apply to a motor vehicle, trailer, ~~or~~ *semitrailer*, or *pole trailer* that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 83. Section 61-3-333, MCA, is amended to read:

"61-3-333. Replacing number plates. If loss, mutilation, or destruction of number plates or a motor vehicle's, *trailer's*, *semitrailer's*, or *pole trailer's* registration decal occurs, the owner of the registered motor vehicle, *trailer*, *semitrailer*, or *pole trailer* may obtain from the department replacements of the number plates or a duplicate registration decal upon filing a sworn declaration stating that fact and payment of a fee of \$5. If loss, mutilation, or destruction of

pioneer plates occurs, duplicates may be obtained in the same manner upon payment of a fee of \$5.”

Section 84. Section 61-3-334, MCA, is amended to read:

“61-3-334. Expiration of registration on transfer of ownership of motor vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, *trailer, semitrailer, or pole trailer*, the registration of the motor vehicle, *trailer, semitrailer, or pole trailer* ~~shall expire~~ expires and it ~~shall be~~ is the duty of the transferor immediately to remove the license plates from the *motor vehicle, trailer, semitrailer, or pole trailer.*”

Section 85. Section 61-3-335, MCA, is amended to read:

“61-3-335. Transfer of license plates to another motor vehicle. (1) ~~Should~~ If the transferor ~~make application~~ *applies* for the registration of another motor vehicle, *trailer, semitrailer, or pole trailer* at any time during the remainder of the current registration year as shown on the original certificate of registration, ~~he the transferor~~ may file an application in the office of the county treasurer where the motor vehicle, *trailer, semitrailer, or pole trailer* is registered, upon a form to be prepared and furnished by the department, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle, *trailer, semitrailer, or pole trailer* for which *the license plates were* originally issued to a motor vehicle, *trailer, semitrailer, or pole trailer* acquired by the same person in whose name the original license plates were issued ~~shall~~ *must* be made within 20 days from *the* date of acquiring the *motor vehicle, trailer, semitrailer, or pole trailer*. The use of the license plates ~~shall~~ *may* not be legalized until proper transfer of *the* license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first *motor vehicle, trailer, semitrailer, or pole trailer*.

(3) Upon transfer of the license plates, the registration of the motor vehicle, *trailer, semitrailer, or pole trailer* from which the license plates were transferred expires. The certificate of registration for ~~such that~~ *motor vehicle, trailer, semitrailer, or pole trailer* must be surrendered to the county treasurer with the application for transfer.”

Section 86. Section 61-3-342, MCA, is amended to read:

“61-3-342. Temporary registration permit — validity — expiration. (1) Any purchaser of a motor vehicle, *trailer, semitrailer, or pole trailer* who is unable to fully complete the process of applying for a certificate of title because the previously issued certificate of title is lost, in the possession of third parties, in the process of reissuance in this state or elsewhere, or subject to a disputed, preexisting security interest may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of all applicable registration fees and taxes, plus an additional fee of \$2 to be collected by the county treasurer and remitted to the department, obtain a temporary registration permit from the county treasurer. The temporary registration permit, when issued by the county treasurer, is valid for 60 days from the date of issuance. The purchaser, upon displaying the temporary registration permit in the manner prescribed by the department, may operate the *motor vehicle, trailer, semitrailer, or pole trailer* during the period stated in the temporary registration permit without displaying the number plates or plate for the current year. The county treasurer may not sell, and a person may not purchase,

more than one 60-day temporary registration permit for any *motor vehicle, trailer, semitrailer, or pole trailer*, the ownership of which has not changed since the issuance of the previous 60-day temporary registration permit.

(2) The department may authorize the county treasurer to extend the previously issued temporary registration permit for an additional 60-day period if:

(a) an unusual circumstance prevents the owner of a *motor vehicle, trailer, semitrailer, or pole trailer* from presenting the certificate of title within the 60-day period permitted under subsection (1);

(b) the owner requests, on a form prescribed by the department, an extension of the time for which the temporary registration permit is valid and pays a \$10 fee.

(3) Upon the expiration of the second 60-day temporary registration permit, if the purchaser still cannot present the previously issued certificate of title, properly assigned to the purchaser by the prior owner, or if a dispute remains as to any preexisting, perfected security interests created by the prior owner or the owner's assignee, the department may authorize the county treasurer to register the *motor vehicle, trailer, semitrailer, or pole trailer* and advise the purchaser that the registration will not be renewed at the end of the registration period unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the purchaser complies with the requirements of 61-3-208."

Section 87. Section 61-3-345, MCA, is amended to read:

"61-3-345. County motor vehicle computer system. (1) The department shall maintain a statewide online computer system to be used to register and reregister motor vehicles, *trailers, semitrailers, pole trailers, boats campers, motorboats, personal watercraft, sailboats*, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, *trailers, semitrailers, pole trailers, boats campers, motorboats, personal watercraft, sailboats*, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration selected by the director of the department of administration;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general."

Section 88. Section 61-3-401, MCA, is amended to read:

"61-3-401. Definition of personalized license plates. Personalized license plates, as used in 61-3-401 through 61-3-406, mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which ~~such~~ *the* registration number was issued in a combination of letters or numbers, or both, requested by the owner of the *passenger motor vehicle*."

Section 89. Section 61-3-403, MCA, is amended to read:

"61-3-403. Color and design of personalized license plates — exception — county designation. (1) Except as provided in 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination ~~thereof~~ *of numbers or letters*, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing *passenger motor vehicle*, *commercial motor vehicle*, *trailer*, *semitrailer*, *pole trailer*, *motorcycle*, *quadricycle*, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department."

Section 90. Section 61-3-404, MCA, is amended to read:

"61-3-404. Personalized license plates restricted to registered owner. Personalized license plates ~~shall~~ *may* be issued only to the registered owner of the *motor vehicle* upon which they are displayed."

Section 91. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* that is more than 30 years old and that is used solely

as a collector's item and not for general transportation purposes may file with the department an application for the registration of the motor vehicle, *trailer*, *semitrailer*, or *pole trailer*. The application must be sworn to before an officer authorized to administer oaths. The application must state:

- (a) the name and address of the owner;
- (b) the name and address of the person from whom purchased;
- (c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, *trailer*, *semitrailer*, or *pole trailer*; and
- (d) that the *motor vehicle*, *trailer*, *semitrailer*, or *pole trailer* is owned and operated solely as a collector's item and not for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration fees, including fees in lieu of tax, the department shall file the application and register the motor vehicle, *trailer*, *semitrailer*, or *pole trailer* in the manner specified in 61-3-303 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* registered under this section is not required, and the registration is valid as long as the *motor vehicle*, *trailer*, *semitrailer*, or *pole trailer* is in existence and owned by the initial registrant. Upon sale of the motor vehicle, *trailer*, *semitrailer*, or *pole trailer*, the purchaser shall renew the registration and pay a license renewal fee of \$10 for a vehicle weighing more than 2,850 pounds and \$5 for a vehicle weighing 2,850 pounds or less."

Section 92. Section 61-3-412, MCA, is amended to read:

"61-3-412. Display of original Montana license plates on collector's item and general transportation collector's item *motor vehicles* — definition — validation. (1) As used in 61-3-413 and this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle, *trailer*, *semitrailer*, or *pole trailer* on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle, *trailer*, *semitrailer*, or *pole trailer* registered as provided in 61-3-411 or 61-3-413 to display original Montana license plates, with validation as required in 61-3-413 or subsection (3) of this section, after:

- (a) payment of the fee required in subsection (5);
- (b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle, *trailer*, *semitrailer*, or *pole trailer* and,

upon payment of a \$5 fee, receipt of the highway patrol officer's certification that the officer has determined that:

(i) the license plate is legible and meets the requirements of subsection (1); and

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night;

(c) receipt of an application by the owner of the motor vehicle, *trailer, semitrailer, or pole trailer* as provided for in 61-3-411 or 61-3-413; and

(d) in the case of a general transportation collector's item application, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

(3) If the owner of a *motor vehicle, trailer, semitrailer, or pole trailer* registered under the provisions of 61-3-314 meets the requirements of subsection (2) of *this section*, the department shall:

(a) file the application and register information on the motor vehicle, *trailer, semitrailer, or pole trailer* in the manner prescribed in 61-3-303; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate *motor vehicles, trailers, semitrailers, or pole trailers* described in 61-3-411(2)(a); or

(B) "V" to designate *motor vehicles, trailers, semitrailers, or pole trailers* described in 61-3-411(2)(b).

(4) The owner of the motor vehicle, *trailer, semitrailer, or pole trailer* shall permanently affix the validating decal to the windshield of the collector's item motor vehicle, *trailer, semitrailer, or pole trailer* or, if a windshield does not exist, to another prominent and visible position on the *motor vehicle, trailer, semitrailer, or pole trailer*.

(5) The owner of the motor vehicle, *trailer, semitrailer, or pole trailer* shall pay to the department with the application required under this section a one-time special collector's item motor vehicle, *trailer, semitrailer, or pole trailer* license fee of \$20."

Section 93. Section 61-3-413, MCA, is amended to read:

"61-3-413. Registration of motor vehicle as general transportation collector's item — definition — permanent registration required. (1) For the purposes of 61-3-412 and this section, a "general transportation collector's item" is a motor vehicle, *trailer, semitrailer, or pole trailer* that is 25 years old or older and that is used for general transportation purposes.

(2) An owner of a general transportation collector's item who wishes to display original Montana license plates on the motor vehicle, *trailer, semitrailer, or pole trailer* shall file with the department an application for the registration of the motor vehicle, *trailer, semitrailer, or pole trailer*. The application must state:

(a) the name and address of the owner;

(b) the year and number of the license plate the applicant wishes to use; and

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, *trailer, semitrailer, or pole trailer*.

(3) Upon receipt of an application for registration of a general transportation collector's item, the department shall compare the number of the license plate that the applicant intends to use with the license plate numbers assigned to currently registered *motor vehicles, trailers, semitrailers, or pole trailers*. The department may reject an application if the number the applicant intends to use matches a number that is assigned to a currently registered *motor vehicle, trailer, semitrailer, or pole trailer*. If the department approves the application, the department shall file the application and register the motor vehicle, *trailer, semitrailer, or pole trailer* in the manner specified in 61-3-101.

(4) Once an application is approved, appropriate fees are paid, and the requirements provided in 61-3-412(2) are met, an owner of a general transportation collector's item shall permanently register the motor vehicle, *trailer, semitrailer, or pole trailer* as provided in 61-3-562 and shall display on the motor vehicle's, *trailer's, semitrailer's, or pole trailer's* license plate a decal indicating that the motor vehicle, *trailer, semitrailer, or pole trailer* has been permanently registered."

Section 94. Section 61-3-421, MCA, is amended to read:

"61-3-421. Amateur radio operators — special license plate. A motor vehicle, *trailer, or pole trailer* owner and resident of this state who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, upon written application on a form prescribed by the department, accompanied by proof of ownership of the amateur radio station license and operator's license, must be issued lettered license plates in pairs (two identically lettered plates), in lieu of the regular license plates prescribed by law. There must be stamped or impressed upon the special license plates in clear lettering the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission, and the plates so lettered must be renewed as provided in 61-3-312."

Section 95. Section 61-3-422, MCA, is amended to read:

"61-3-422. Issuance — application — additional fee. The department shall issue lettered license plates as provided in 61-3-421 to amateur radio operators upon:

(1) application showing proof that the applicant is the owner and holder of an amateur radio station license and operator's license;

(2) compliance with the state ~~motor vehicle~~ laws relating to registration and licensing of motor vehicles, *trailers, semitrailers, or pole trailers*;

(3) payment, or proof of payment, of all other fees and taxes applicable to regular motor vehicle, *trailer, semitrailer, or pole trailer* license plates; and

(4) payment of a \$5 additional fee."

Section 96. Section 61-3-423, MCA, is amended to read:

"61-3-423. Rules — limit of one identical pair of plates for each operator. The department shall ~~make such~~ *adopt* rules as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle, *trailer, semitrailer, or pole trailer* licenses relating to the use and operation of motor vehicles, *trailers, semitrailers, or pole trailers* before issuing

the lettered license plates. The department ~~shall~~ *may* not issue more than one identical pair of lettered license plates for any licensed amateur radio station in any one licensing period.”

Section 97. Section 61-3-425, MCA, is amended to read:

“61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license. The lettered license plates, as ~~herein~~ provided in 61-3-421 through 61-3-423, are in lieu of the regular license plates on the motor vehicle, *trailer, semitrailer, or pole trailer* owned by the amateur radio licensee for the period of time that the amateur radio license is in force under the federal communications commission and the special license issued ~~hereunder~~ under 61-3-421 through 61-3-423 is in force, but no longer. If the official amateur radio license is revoked or expires for any reason, the license plate must be removed immediately by the owner of the motor vehicle, *trailer, semitrailer, or pole trailer*, and it is the responsibility of the owner to ~~then~~ obtain regular license plates. If the motor vehicle, *trailer, semitrailer, or pole trailer* is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator’s licenses has the right to transfer the lettered plates to another motor vehicle, *trailer, semitrailer, or pole trailer* owned by ~~him~~ *the holder* upon ~~such~~ reasonable conditions ~~as~~ *that* may be prescribed by the department. On the revocation or expiration of the amateur radio station and operator’s licenses, the lettered license plates as issued must be returned and surrendered to the department.”

Section 98. Section 61-3-431, MCA, is amended to read:

“61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — special demonstration permit — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation ~~who~~ *that* owns, leases, or rents special mobile equipment, ~~as defined in 61-1-104 a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader and that~~ occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-4-301 through 61-4-308 or ~~part 2 of Title 61, chapter 10, part 2.~~ Prior to movement on the highways:

(a) each piece of equipment must display an equipment identification plate or a dealer’s license plate attached to the equipment, except for ~~equipment referred to in 61-1-104(2) motor vehicles or trailers designed and used to apply fertilizer to agricultural land that is~~ *are* brought into Montana for demonstration purposes;

(b) each ~~piece of equipment referred to in 61-1-104(2) motor vehicle or trailer designed and used to apply fertilizer to agricultural land that is~~ brought into Montana for demonstration purposes must have a special demonstration permit conspicuously displayed.

(2) (a) Annual application for the identification plate must be made to the county treasurer before any piece of equipment is moved on the highways. Application must be made on a form furnished by the department, together with the payment of a fee of \$5. The equipment for which a special mobile equipment plate or for which a special demonstration permit is sought is subject to the assessment of personal property taxes on the date application is made for the plate or the date determined pursuant to subsection (4). The personal property taxes assessed against the special mobile equipment, *a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader* must be

paid before ~~a special mobile equipment~~ *an identification* plate may be issued. The fees collected under this section must be deposited in the state general fund, except that \$25 of the special demonstration permit fee must be remitted to the department of transportation.

(b) Application must be made for a special demonstration permit as provided in subsection (1)(b). The application must be made to the county treasurer or to a weigh station before the piece of equipment is moved on Montana highways. Application for the special demonstration permit must be made on a form furnished by the department and must be accompanied by the payment of a fee of \$50.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment, *a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader* registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) (a) The special demonstration permit expires 45 days after its issuance. Special mobile equipment, *a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader* that remains in the state past the expiration of the permit is subject to the assessment of personal property taxes, starting on the first day following expiration of the permit.

(b) If the holder of a special demonstration permit leases or sells the piece of equipment during the term that is covered by the permit, the permit is no longer valid and the special mobile equipment, *motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or log loader* is subject to the assessment of personal property taxes, starting on the first day of the lease or the date of the sale.

(5) Publicly owned special mobile equipment, *motor vehicles or trailers designed and used to apply fertilizer to agricultural land, or log loaders* and implements of husbandry used exclusively by an owner in the conduct of the owner's farming operations are exempt from this section."

Section 99. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-332(10) or generic specialty license plates issued as provided in 61-3-472 through 61-3-481 disposes of the *motor* vehicle to which the plates are affixed, the holder may retain the plates and affix them to another vehicle."

Section 100. Section 61-3-448, MCA, is amended to read:

"61-3-448. Commemorative centennial license plates — continued use and replacement authorized. (1) A person who owns and displays commemorative centennial license plates on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the *motor* vehicle after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable."

Section 101. Section 61-3-456, MCA, is amended to read:

“61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.

(1) As an incentive for military service, an owner of a motor vehicle, *trailer, semitrailer, or pole trailer* who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle, *trailer, semitrailer, or pole trailer*. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, *trailer, semitrailer, or pole trailer*; and

(c) that the *motor vehicle, trailer, semitrailer, or pole trailer* is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle, *trailer, semitrailer, or pole trailer* registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A *motor vehicle, trailer, semitrailer, or pole trailer* registered under this section is not subject to:

(a) the taxes described in 61-3-303(5)(b);

(b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562; or

(c) any of the fees provided in part 5 of this chapter.”

Section 102. Section 61-3-458, MCA, is amended to read:

“61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301.

(2) (a) Upon application, after paying all applicable *motor vehicle, trailer, semitrailer, or pole trailer* registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters “NG”. However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval

reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable *motor vehicle, trailer, semitrailer, or pole trailer* registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or ~~a former member~~ *member* of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 103. Section 61-3-460, MCA, is amended to read:

"61-3-460. Vehicle registration fee and veterans' cemetery fee waivers. (1) Except as otherwise provided in this section, a person eligible under subsection (2) is exempt from the veterans' cemetery fee provided in 61-3-459 for one set of special veteran license plates and all *motor* vehicle registration fees imposed by this chapter for one *motor* vehicle that is not used for commercial purposes.

(2) The following persons are eligible for the waiver provided in subsection (1):

(a) a veteran who was a prisoner of war who presents official documentation from the U.S. department of defense verifying the veteran's status, or the veteran's surviving spouse, if the spouse has not remarried;

(b) a veteran who is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs, or the veteran's surviving spouse, if the spouse has not remarried;

(c) a veteran determined by the U.S. department of veterans affairs to be 50% or more disabled because of a service-connected injury and who has been awarded the purple heart, as verified by official documentation from the U.S. department of veterans affairs and the veteran's military service record issued by the U.S. department of defense, or the veteran's surviving spouse, if the spouse has not remarried, except that the veteran or the surviving spouse shall pay the veterans' cemetery fee as provided for in 61-3-459;

(d) the surviving spouse, if the spouse has not remarried, of a military service member killed while on active duty as verified in official documentation issued by the U.S. department of defense; and

(e) the surviving spouse, if the spouse has not remarried, of a military service member or veteran who died of a service-connected injury or disability as determined by and verified in official documentation from the U.S. department of veterans affairs."

Section 104. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

- (b) payment to the county treasurer of:
 - (i) an initial application and manufacturing fee of \$5, when required; and
 - (ii) an annual scholarship donation of \$30 for the benefit of the institution named in the application.
- (2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the ~~department of revenue~~ *state* the total of the amounts collected for:
 - (a) the initial application and manufacturing fee for deposit in the state general fund; and
 - (b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.
- (3) Once each month, ~~the department of revenue shall distribute to the student academic scholarship fund or foundation of each institution~~ an amount equal to the total donations credited to that institution and transferred to the ~~department of revenue~~ *state* by the county treasurers during the preceding month *must be distributed to the student academic scholarship fund or foundation of each institution.*

Section 105. Section 61-3-467, MCA, is amended to read:

“61-3-467. Authorization to receive and transmit donations. As provided in 61-3-465 and notwithstanding any other provisions of Title 7, Title 17, or this title:

- (1) the county treasurer must receive the annual scholarship donations provided for in 61-3-465 and once each month transmit, as provided in 15-1-504, those donations to the ~~department of revenue~~ *state*; and
- (2) the ~~department of revenue~~ *appropriate agency* shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers’ reports.”

Section 106. Section 61-3-468, MCA, is amended to read:

“61-3-468. Collegiate license plates — continued use with institution’s former name authorized — replacement. (1) A person who owns and displays on the person’s *motor* vehicle, collegiate license plates that bear the name of an institution that has been renamed by its governing body or as part of the Montana university system reorganization may continue to display on the vehicle the license plate bearing the former name of the institution as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available.”

Section 107. Section 61-3-474, MCA, is amended to read:

“61-3-474. Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — registration decal — listing of plate sponsors. (1) The department shall:

- (a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, the department shall provide registration decals bearing the appropriate county designation as provided in 61-3-332. The registration decal must be affixed to the license plates in use in accordance with instructions by the department.

(4) The department shall maintain a list of the sponsors that have been approved to promote the sale and issuance of generic specialty license plates, the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate. The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of a sponsor's generic specialty license plate sponsorship if:

(a) the sponsor fails to comply with the provisions of 61-3-472 through 61-3-481;

(b) fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; or

(c) the department has reliable information that the sponsor is no longer qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated and a donation fee may not be charged or collected upon registration renewal of a *motor* vehicle displaying previously issued generic specialty license plates affiliated with that sponsor.

(b) A person who owns a *motor* vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's *motor* vehicle if the *motor* vehicle's registration is properly renewed in subsequent years and the plates remain legible.

(c) Following revocation of a sponsor's sponsorship status, the department may not issue duplicates of generic specialty license plates affiliated with that sponsor that are lost, destroyed, or mutilated."

Section 108. Section 61-3-479, MCA, is amended to read:

"61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the ~~department of revenue~~ *state* and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from; and issue a special certificate of registration to; a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any *motor* vehicle, except a trailer of any size, a motorcycle, or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws that govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on number plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(11)."

Section 109. Section 61-3-480, MCA, is amended to read:

"61-3-480. Fees for generic specialty license plates — disposition. (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of \$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer shall, upon receipt of the fees:

(a) deposit \$5 of the \$15 administrative fee in the county general fund;

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the ~~department of revenue~~ *state* for distribution:

(i) \$10 of the \$15 administrative fee to the state general fund; and

(ii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

(3) If the donation fee is required by a sponsor upon renewal of generic specialty license plates, the fee must be paid to the county treasurer upon renewal of registration and transmitted to the ~~department of revenue~~ *state* as prescribed in subsection (2).

(4) Once each month, the ~~department of revenue~~ *state* shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or 61-3-476(3) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month.”

Section 110. Section 61-3-481, MCA, is amended to read:

“61-3-481. Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department in conjunction with the registration of any *motor* vehicle, except a trailer of any size, a motorcycle, or a quadricycle. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official number plates for a motor vehicle.”

Section 111. Section 61-3-501, MCA, is amended to read:

“61-3-501. When *motor* vehicle taxes and fees are due. (1) Light vehicle registration fees, local option *motor* vehicle taxes or fees, fees in lieu of tax, and other fees must be paid on the date of registration or reregistration of the *motor* vehicle.

(2) (a) If the anniversary date for reregistration of a *motor* vehicle passes while the *motor* vehicle is owned and held for sale by a licensed new or used car dealer, light vehicle registration fees, local option *motor* vehicle taxes or fees, or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the *motor* vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the light vehicle registration fees, local option *motor* vehicle taxes or fees, or fees in lieu of tax due and owing on the *motor* vehicle.

(b) A person selling a *motor* vehicle or trading a *motor* vehicle to a dealer shall disclose to the purchaser any amount of taxes or fees in lieu of tax that are due or past due on the *motor* vehicle at the time the person sells a *motor* vehicle or trades a *motor* vehicle to a dealer. If the disclosure is not made, the person selling the *motor* vehicle or trading the *motor* vehicle to the dealer shall pay the taxes or fees. Taxes or fees in lieu of tax that are due or past due on a *motor* vehicle at the time that a person sells or trades the *motor* vehicle to a dealer must be paid by the person who sold or traded the *motor* vehicle to the dealer, unless the person who purchases the *motor* vehicle from the dealer agrees in writing to assume the payment of those taxes or fees. This subsection (2)(b) does not apply to fleet *motor* vehicles, leased *motor* vehicles, or rental return *motor* vehicles.

(c) For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;

- (ii) another licensed new motor vehicle or used motor vehicle dealer;
- (iii) a licensed wholesaler; or
- (iv) a licensed auto auction.

(3) In the event that a *motor* vehicle's registration period is changed under 61-3-315, all light vehicle registration fees, local option *motor* vehicle taxes or fees, fees in lieu of tax, and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the *motor* vehicle is registered. The light vehicle registration fees, local option *motor* vehicle taxes or fees, fees in lieu of tax, and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, light vehicle registration fees, local option *motor* vehicle taxes or fees, and other fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each *motor* vehicle must again be registered or reregistered and all light vehicle registration fees, local option *motor* vehicle taxes or fees, and other fees must be paid for a 12-month period."

Section 112. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment — definition. (1) Except as provided in 61-3-520 and subsection (4) of this section, the following apply to the taxation of motor vehicles:

(a) For the purposes of imposing the local option *motor* vehicle tax under 61-3-537, light vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).

(b) A lien for taxes and fees due on the *motor* vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than \$500, the department shall value the *motor* vehicle at \$500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the *light* vehicle determined from the following table:

Age of Vehicle (in years)	Type of Vehicle			
	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57
7	26	49	38	48
8	21	43	32	39
9	17	37	27	33

Ch. 542	MONTANA SESSION LAWS 2005				2282
10	14	31	22		29
11	12	26	18		25
12	10	22	15		22
13	09	18	13		21
14	09	15	11		19
15	09	13	09		17
16	09	12	09		15

(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the *light* vehicle from the calendar year for which the tax is due.

(c) If the value of the *light* vehicle determined under subsection (2)(a) is \$500 or less, the value of the *light* vehicle is \$500 and the value must remain at that amount as long as the *light* vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a minimum value of \$500 is attained. The value must remain at that amount as long as the *light* vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a *light* vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the *motor* vehicle.

(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1)."

Section 113. Section 61-3-506, MCA, is amended to read:

"61-3-506. Rules. The department of justice may adopt rules:

(1) for the assessment and collection of ~~taxes and~~ registration fees under ~~61-3-560 through 61-3-321 and~~ 61-3-562, including the proration of fees under 61-3-520, on light vehicles, including criteria for determining the *motor* vehicle's age;

(2) for the imposition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the *motor* vehicle's age and manufacturer's rated capacity; and

(3) for the administration of fees for trailers, *semitrailers*, and pole trailers; ~~and semitrailers~~, including criteria for determining a trailer's age and weight."

Section 114. Section 61-3-507, MCA, is amended to read:

“61-3-507. Exemption. A *motor vehicle, trailer, semitrailer, or pole trailer* that is exempt from taxation and registration fees under 15-6-215 or subject to the provisions of 61-3-520 is exempt from all other taxes and fees generally imposed on a *motor vehicle, trailer, semitrailer, or pole trailer* by this part.”

Section 115. Section 61-3-509, MCA, is amended to read:

“61-3-509. Disposition of fees. All registration fees imposed by ~~61-3-561 61-3-321 from~~ on light vehicles, ~~all registration fees imposed by 61-3-522 from~~ motor homes, ~~all fees in lieu of tax imposed by 61-3-527 from~~ motorcycles, and quadricycles, ~~and all fees imposed by 61-3-529 from~~ buses, motor vehicles having a manufacturer’s rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer’s statement of origin is made, must be remitted to the ~~department of revenue state, as provided in 15-1-504,~~ every 30 days. The ~~department of revenue shall credit the payments to~~ *must be deposited in* the state general fund.”

Section 116. Section 61-3-520, MCA, is amended to read:

“61-3-520. Fees on *motor vehicles used exclusively in filming motion pictures or television commercials.* (1) A *motor vehicle, trailer, semitrailer, or pole trailer* used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year is subject to a registration fee under ~~61-3-560 and 61-3-561 61-3-321 or a fee in lieu of tax~~ as if the *motor vehicle, trailer, semitrailer, or pole trailer* were not used exclusively for filming motion pictures or television commercials, but the registration fee ~~or fee in lieu of tax~~ must be prorated as provided in subsection (2).

(2) (a) The registration fees ~~or the fees in lieu of tax~~ imposed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

(b) Fees on a *motor vehicle, trailer, semitrailer, or pole trailer* imposed pursuant to this section must be collected as provided in this chapter.”

Section 117. Section 61-3-526, MCA, is amended to read:

“61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed. (1) Except for a motor home displaying amateur radio operator license plates as provided in 61-3-421, all registrations of motor homes expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home is transferred during the registration year, it must be reregistered as provided by statute.

(2) The owner of a motor home registered under the provisions of this section may operate the ~~vehicle~~ *motor home* between May 1 and June 15 without displaying the certificate of registration of the current registration year if the owner, during that period, displays upon the motor home the number plates or plate or the registration decal assigned to the motor home for the previous registration year.

(3) A travel trailer that is initially registered under this chapter remains registered unless ownership of the travel trailer is transferred. If ownership is transferred, the new owner shall register the travel trailer as if the travel trailer were being registered for the first time.

(4) The department shall adopt rules to assign a registration period for motor homes that display amateur radio operator license plates.”

Section 118. Section 61-3-529, MCA, is amended to read:

“61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption. (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer’s rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer’s rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer’s rated capacity of the *motor* vehicle according to the following schedule:

Age of <i>Motor</i> Vehicle (in years)	Rated Capacity (in pounds)			
	16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	\$117	\$167	\$284	\$375
2	109	150	250	300
3	100	134	220	266
4	92	117	184	242
5	83	109	160	195
6	75	100	134	167
7	66	91	117	147
8	58	83	100	125
9	50	75	92	109
10	41	58	79	92
11-12	33	50	67	76
13-14	28	37	52	61
15-16	25	30	38	47
17-18	18	26	29	36
19-20	13	19	22	26
21 or more	10	12	16	20

(3) The age of the *motor* vehicle is determined by subtracting the manufacturer’s model year of the *motor* vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer’s rated capacity for a bus or truck with a manufacturer’s rated capacity of more than 1 ton is the manufacturer’s rated gross vehicle weight.

(b) The manufacturer’s rated capacity for a truck tractor is the manufacturer’s rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a *motor* vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a *motor* vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a *motor* vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded."

Section 119. Section 61-3-535, MCA, is amended to read:

"61-3-535. ~~Vehicle~~ Motor vehicle reregistration by mail — reminder notice and reregistration notice by mail. (1) The department may allow the owner of a motor vehicle, *trailer, semitrailer, or pole trailer* to renew the registration of a *motor vehicle, trailer, semitrailer, or pole trailer* by mail when the value, age, length, weight, or other criteria used to determine the tax or fee for a particular type of *motor vehicle, trailer, semitrailer, or pole trailer* is available to the department by electronic means.

(2) Any mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration and must provide for a written reminder notice by mail to *the owner of a motor vehicle, trailer, semitrailer, or pole trailer* ~~owner~~ of the requirement to reregister the owner's *motor vehicle, trailer, semitrailer, or pole trailer* with the county treasurer or to apply for the annual registration decal.

(3) The department shall adopt rules to implement the mail reregistration and registration decal application procedure."

Section 120. Section 61-3-537, MCA, is amended to read:

"61-3-537. Local option motor vehicle tax. (1) A county may impose a local *option motor vehicle* tax on *motor vehicles* subject to the registration fee imposed under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562 at a rate of up to 0.7% of the value determined under 61-3-503 or a local flat fee, in addition to the fee imposed under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562.

(2) A local *option motor vehicle* tax or flat fee is payable at the same time and in the same manner as the fee imposed under ~~61-3-560 through 61-3-321(2)~~ or 61-3-562. The tax or fee is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local *option motor vehicle* tax or flat fee if the imposition, revision, or revocation of the tax or fee is approved by the electorate of the county. The imposition, revision, or revocation of the tax or fee is effective on January 1 following its approval by the

electorate. The county governing body by resolution may provide for the distribution of the local *option motor* vehicle tax or flat fee.”

Section 121. Section 61-3-562, MCA, is amended to read:

“61-3-562. Permanent registration — transfer of *light* vehicle ownership — rules. (1) (a) Except as provided in subsection ~~(1)(c)~~ (1)(b), the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in ~~61-3-561~~ 61-3-321(2), may permanently register the *light* vehicle upon payment of a \$50 \$87.50 registration fee, the applicable registration and license fees under ~~61-3-321~~ and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

- ~~(i) junk vehicle disposal fees under 15-1-122(3)(a);~~
- ~~(ii) weed control fees under 15-1-122(3)(b);~~
- ~~(iii)~~ (i) the former county motor vehicle computer fees under 61-3-511;
- ~~(iv)~~ (ii) the local *option motor* vehicle tax or flat fee on vehicles under 61-3-537; and
- ~~(v)~~ (iii) if applicable, special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and
- ~~(vi) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).~~

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(c)(b) The following series of license plates may not be used for purposes of permanent registration of a *light* vehicle:

- (i) Montana national guard license plates issued under 61-3-458(2)(b);
- (ii) reserve armed forces license plates issued under 61-3-458(2)(c);
- (iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);
- (iv) amateur radio operator license plates issued under 61-3-422;
- (v) collegiate license plates issued under 61-3-465; and
- (vi) generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer’s rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional *registration* fees under ~~61-3-561~~ or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

~~(a) distribute the \$50 registration fee collected under this section as provided in 61-3-509;~~

~~(b) once each month, remit to the department of revenue state the amounts collected under this section, other than the local *option motor* vehicle tax or flat~~

fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option *motor* vehicle tax or flat fee.

(5) (a) The permanent registration of a *light* vehicle allowed by this section may not be transferred to a new owner. If the *light* vehicle is transferred to a new owner, the department shall cancel the *light* vehicle's permanent registration.

(b) Upon transfer of a *light* vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and file an application for registration under 61-3-303. ~~(Subsection (1)(b) terminates on occurrence of contingency—see. 24, Ch. 191, L. 2001.)~~

Section 122. Section 61-3-603, MCA, is amended to read:

“61-3-603. Penalty for alteration or forgery of certificate of ownership or certificate of title — assignment. A person who alters or forges or causes to be altered or forged any motor vehicle, *trailer, semitrailer, or pole trailer* certificate of ownership or certificate of title or any assignment of a certificate of ownership or certificate of title or who holds or uses any certificate or assignment knowing that the certificate has been altered or forged is guilty of a felony. Upon a conviction of a violation of this section, the offender is subject to a fine of not more than \$5,000, to imprisonment for a period of not more than 10 years, or both.”

Section 123. Section 61-3-604, MCA, is amended to read:

“61-3-604. Penalty for altering identification number. (1) A person who willfully removes or falsifies an identification number of a motor vehicle, *trailer, semitrailer, pole trailer*, or motor vehicle engine is punishable by a fine of not more than \$5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.

(2) Any person or persons, firm, or corporation that sells or offers for sale in this state a *motor vehicle, trailer, semitrailer, or pole trailer* the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced, with the exception of *motor vehicles, trailers, semitrailers, or pole trailers* bearing a state-assigned identification number in accordance with 61-3-107, is punishable by a fine of not less than \$200 or more than \$500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed \$50,000, or both.”

Section 124. Section 61-3-607, MCA, is amended to read:

“61-3-607. Penalty for tampering with odometer or violating odometer statement requirements. (1) It is unlawful for a person to tamper with the odometer of a motor vehicle. It is considered tampering if a person removes, turns back, or changes the reading on the odometer, except when repairing or replacing a defective odometer and setting it anew to show the true mileage, or if a person sells, offers for sale, uses, installs, or causes to be installed any device that causes the odometer to register a mileage reading other than the true mileage for the purpose of deceiving a prospective purchaser. For purposes of this section, the true mileage is that driven by the *motor* vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) A person who purposely or knowingly violates the provisions of 61-3-206 or subsection (1) of this section is punishable by a fine of not more than \$5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.

If that person is a motor vehicle dealer, the department shall revoke the dealer's license. Action by the department under this subsection must conform to the contested case procedures in Title 2, chapter 4."

Section 125. Section 61-3-701, MCA, is amended to read:

"61-3-701. Out-of-state motor vehicles used in gainful occupation to be registered — reciprocity. (1) Before a motor vehicle, *trailer, semitrailer, or pole trailer* that is registered in another jurisdiction may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the *motor vehicle, trailer, semitrailer, or pole trailer* uses the *motor vehicle, trailer, semitrailer, or pole trailer* if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the *motor vehicle, trailer, semitrailer, or pole trailer* shall register the *motor vehicle, trailer, semitrailer, or pole trailer* at the office of a county treasurer or an authorized agent of the department. Upon satisfactory evidence of ownership submitted to the county treasurer or the department's authorized agent and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-529, *61-3-321(2), or 61-3-537, or 61-3-560 and 61-3-561,* the treasurer or authorized agent shall enter the *motor vehicle, trailer, semitrailer, or pole trailer* for registration purposes only on the electronic registry maintained by the department under 61-3-101.

(2) Upon payment of the fees or taxes, the treasurer or the department's authorized agent shall issue to the *owner of the motor vehicle, trailer, semitrailer, or pole trailer* ~~owner~~ a registration receipt and the proper license plates or other identification markers. The license plates or identification markers must at all times be displayed upon the *motor vehicle, trailer, semitrailer, or pole trailer* when operated or driven upon roads and highways of this state during the registration period indicated on the receipt.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of title may not be issued for a *motor vehicle, trailer, semitrailer, or pole trailer* registered under this section.

(4) This section is not applicable to a *motor vehicle, trailer, semitrailer, or pole trailer* covered by a valid and existing reciprocal agreement or declaration entered into under Montana law."

Section 126. Section 61-3-702, MCA, is amended to read:

"61-3-702. Foreign vehicles to display number plates. All foreign registered and licensed motor vehicles, *trailers, semitrailers, or pole trailers* shall also carry in plain sight ~~thereon~~ *on the motor vehicle, trailer, semitrailer, or pole trailer* the license plates or device from ~~such~~ *the* other state or foreign country."

Section 127. Section 61-3-703, MCA, is amended to read:

"61-3-703. Purpose. Sections 61-3-701 and 61-3-702 ~~shall be~~ *are* solely for the purpose of taxation, registration, and identification of *motor vehicles, trailers, semitrailers, or pole trailers* operated in this state that have paid a license fee in another state or foreign country, and ~~otherwise~~ *other* than as ~~herein~~ *specifically set forth* ~~shall in 61-3-701 and 61-3-702~~ *may not be construed as a repeal of any laws or parts of laws having to do with the registration or licensing of automobiles* *motor vehicles, trailers, semitrailers, or pole trailers* within the state."

Section 128. Section 61-3-704, MCA, is amended to read:

“61-3-704. Penalty. Any person operating a *motor vehicle, trailer, semitrailer, or pole trailer* in violation of the intent and purpose of 61-3-701 or 61-3-702 ~~shall be~~ *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10 or more than \$50, ~~or~~ confined in the county jail for not more than 30 days, or both ~~such fine and imprisonment.~~”

Section 129. Section 61-3-707, MCA, is amended to read:

“61-3-707. Foreign vehicles used for transportation in connection with employment. (1) (a) Before a motor vehicle, *trailer, semitrailer, or pole trailer* that has been assessed a fee pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of fees shall apply for and obtain a ~~window~~ decal provided by the department.

(b) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(d) There is a \$2 fee for each decal, and money collected from this fee must be deposited to the state general fund. The \$2 fee is in addition to the registration fee.

(e) A current ~~window~~ decal must be displayed on the lower right-hand corner of the windshield *of a motor vehicle and in a conspicuous location on a trailer, semitrailer, or pole trailer.*

(2) (a) Before a motor vehicle exempted pursuant to 15-6-217 may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. The department shall supply the decals to the county treasurers.

(b) An application approved by the department must include a verification from the employer that the person is employed by a Montana health care facility that is located in an area that has been:

(i) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(ii) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3).

(c) Decals expire each year on December 31 of the year in which issued, and application for reregistration must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

(d) A current window decal must be displayed on the lower right-hand corner of the windshield.”

Section 130. Section 61-3-708, MCA, is amended to read:

“61-3-708. Cooperative or reciprocal registration — filing of insurance — fee. (1) The department may enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of interstate or international motor carriers and authorize the agency of a participating state to:

(a) issue interstate motor carrier registrations, stamps, and permits;

(b) accept filings of insurance, financial responsibility, and orders;

- (c) collect and disburse fees;
 - (d) share and exchange information for audit, reporting, and enforcement purposes; and
 - (e) perform any other function that the department determines is justified to facilitate the cooperative or reciprocal registration.
- (2) (a) The department may impose a fee set by rule on an interstate or international motor carrier for the administration of this section. The fee must be paid on each motor vehicle, *trailer, semitrailer, or pole trailer* operated by the motor carrier on the public highways of this state. At the time of initial registration and *in* each succeeding year, at a time set by the department, the motor carrier shall pay the fee to the department.
- (b) The department shall remit the fee to the state treasurer for deposit in the general fund."

Section 131. Section 61-3-709, MCA, is amended to read:

"61-3-709. Identification of ownership of certain large motor vehicles. (1) (a) A person may not operate a motor vehicle, *trailer, semitrailer, or pole trailer* or combination of *motor vehicles, trailers, semitrailers, or pole trailers*, except farm *motor vehicles*, having a gross weight of more than 10,000 pounds upon the highways of the state unless there is displayed on both sides of each *motor vehicle, trailer, semitrailer, or pole trailer* operated under its own power, either alone or in combination:

- (i) the name or trade name and city and state of the person or corporation under whose jurisdiction the *motor vehicle, trailer, semitrailer, or pole trailer* is being operated; or
- (ii) the trade name and department of transportation number of the person or corporation under whose jurisdiction the *motor vehicle, trailer, semitrailer, or pole trailer* is being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the *motor vehicle, trailer, semitrailer, or pole trailer* is not in motion. The display must be kept and maintained to remain legible. The display may be accomplished either by painting the information on the *motor vehicle, trailer, semitrailer, or pole trailer* or through the use of a decal or a removable device that is prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to motor vehicles, *trailers, semitrailers, or pole trailers* being:

- (a) transported to dealers from point of manufacture;
- (b) transported from one dealer to another;
- (c) demonstrated to a prospective buyer; or
- (d) delivered to a buyer from a dealer or a manufacturer."

Section 132. Section 61-3-711, MCA, is amended to read:

"61-3-711. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of ~~motor vehicle~~ reciprocal or proportional registration agreements, arrangements, and declarations with other states, provinces, territories, and countries with respect to *motor vehicles, trailers, semitrailers,*

or pole trailers registered in this and ~~such~~ other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state.”

Section 133. Section 61-3-712, MCA, is amended to read:

“61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) “Apportionable *motor vehicle*” means a *motor vehicle, trailer, semitrailer, or pole trailer* ~~which that~~ is used or intended for use in more than one jurisdiction and *that* is used for the transportation of persons for hire, compensation, or profit; or designed or used primarily for the transportation of property.

(2) “Fleet” means one or more apportionable *motor vehicles*.

(3) “Jurisdiction” means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) “Legal residence” means a jurisdiction where the person lives or conducts ~~his~~ business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word “residence” in 61-3-711 through 61-3-733 ~~shall~~ *must* be confined to the definition given; and ~~shall may~~ not be confused with the word “domicile”. This definition of “residence” further recognizes that a person may have several residences, but only one domicile.

(5) “Preceding year” means a period of 12 consecutive months fixed by the department of transportation, which period ~~shall~~ *must* be within 18 months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall ~~make it~~ conform *the period* to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of *motor vehicles, trailers, semitrailers, or pole trailers*.

(6) (a) “Properly registered”, as applied to place of registration, means:

(i) the jurisdiction where the person registering the *motor vehicle, trailer, semitrailer, or pole trailer* has ~~his~~ *the person’s* legal residence;

(ii) in the case of an apportionable *motor vehicle*, the jurisdiction in which it is registered if the enterprise in which the *motor vehicle, trailer, semitrailer, or pole trailer* is used has a place of business ~~therein in the jurisdiction~~ and if the *motor vehicle, trailer, semitrailer, or pole trailer* is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the *motor vehicle, trailer, semitrailer, or pole trailer* has been assigned to the place of business; or

(iii) in the case of an apportionable *motor vehicle*, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the *motor vehicle, trailer, semitrailer, or pole trailer* has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a *motor vehicle, trailer, semitrailer, or pole trailer*, the transportation commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected.”

Section 134. Section 61-3-714, MCA, is amended to read:

“61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards. The department of transportation may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to *motor vehicles, trailers, semitrailers, or pole trailers* or to owners of *motor vehicles, trailers, semitrailers, or pole trailers* ~~which~~ that are properly registered or licensed in those jurisdictions; and for which evidence of compliance is supplied, benefits, privileges, and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those *motor vehicles, trailers, semitrailers, or pole trailers* or owners with respect to the operation or ownership of the *motor vehicles, trailers, semitrailers, or pole trailers* under the laws of this state. The agreement or arrangement ~~shall~~ *must* provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, ~~shall~~ *must* receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to *motor vehicles, trailers, semitrailers, or pole trailers* properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement ~~shall~~ *must*, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits ~~which~~ *that* accrue to the economy of this state from the uninterrupted flow of commerce.”

Section 135. Section 61-3-715, MCA, is amended to read:

“61-3-715. Base state registration reciprocity. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions authorizing the registration or licensing in another jurisdiction of *motor vehicles, trailers, semitrailers, or pole trailers* located in or operated from a base in ~~such the~~ other jurisdiction; ~~which for~~ *motor vehicles, trailers, semitrailers, or pole trailers* ~~otherwise that~~ would be required to be registered or licensed in this state; ~~and in such event the~~ *The* exemptions, benefits, and privileges extended by ~~such the~~ agreement, arrangement, or declaration ~~shall~~ apply to ~~such~~ *motor vehicles, trailers, semitrailers, or pole trailers* when properly licensed or registered in ~~such the~~ base jurisdiction.”

Section 136. Section 61-3-716, MCA, is amended to read:

“61-3-716. Proportional registration of fleet *motor vehicles*. (1) If a jurisdiction permits or requires the licensing of fleets of *motor vehicles, trailers, semitrailer, or pole trailers* in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes, or other fixed fees on those *motor vehicles, trailers, semitrailers, or pole trailers* on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction’s highways; as compared with the miles traveled on and the use made of other jurisdiction’s highways or any other equitable basis of apportionment; and ~~if the jurisdiction~~ *exempts motor vehicles, trailers, semitrailers, or pole trailers* registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes, or other fixed fees, then the department may, by agreement, adopt exemptions with respect to *motor vehicles, trailers, semitrailers, or pole trailers* of these fleets, whether owned by residents or nonresidents of this state and regardless of where *they are* based. An agreement, under the terms, conditions, or restrictions that the department considers proper, may provide that owners of *motor vehicles, trailers, semitrailers, or pole trailers* operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes, or other fixed

fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize or be construed to authorize a *motor vehicle, trailer, semitrailer, or pole trailer* so registered to be operated in intrastate commerce in this state unless the owner of the *motor vehicle, trailer, semitrailer, or pole trailer* has been granted intrastate authority or rights by the public service commission if a grant is otherwise required by law.

(2) The department of transportation may adopt rules that it considers necessary to carry out and administer this section, and the registration of fleet *motor vehicles, trailers, semitrailers, or pole trailers* under 61-3-711 through 61-3-733 is subject to the rights, terms, and conditions granted by or contained in any applicable agreement, arrangement, or declaration made by the department. The department of transportation shall adopt rules providing for a change of registration period for a fleet in a case in which the owner of the fleet requests that the registration period be changed to coincide with the registration period of one or more other fleets in the same ownership."

Section 137. Section 61-3-717, MCA, is amended to read:

"61-3-717. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to *motor vehicles, trailers, semitrailers, or pole trailers* properly registered or licensed in the other jurisdiction; or to the owners of the *motor vehicles, trailers, semitrailers, or pole trailers* which ~~that~~ are in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits ~~which that~~ accrue to the economy of this state from the uninterrupted flow of commerce."

Section 138. Section 61-3-718, MCA, is amended to read:

"61-3-718. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions under which a leased *motor vehicle, trailer, semitrailer, or pole trailer* properly registered by the lessor ~~thereof~~ may be entitled, subject to terms and conditions stated ~~therein~~ in the agreement, arrangement, or declaration, to the exemptions, benefits, and privileges extended by ~~such the~~ agreement, arrangement, or declaration."

Section 139. Section 61-3-719, MCA, is amended to read:

"61-3-719. Automatic reciprocity. ~~On and after March 7, 1963, if no~~ If an agreement, arrangement, or declaration is *not* in effect with respect to another jurisdiction as authorized by 61-3-711 through 61-3-733, any *motor vehicle, trailer, semitrailer, or pole trailer* properly registered or licensed in ~~such other~~ another jurisdiction; and for which evidence of compliance is supplied, ~~shall~~ must receive, when operated in this state, the same exemptions, benefits, and privileges granted by ~~such the~~ other jurisdictions to *motor vehicles, trailers, semitrailers, or pole trailers* properly registered in this state. Reciprocity extended under this ~~subsection shall apply~~ section applies to commercial *motor vehicles, trailers, semitrailers, or pole trailers* only when engaged exclusively in interstate commerce."

Section 140. Section 61-3-720, MCA, is amended to read:

“61-3-720. Proportional registration not exclusive. ~~Nothing contained in Sections 61-3-711 through 61-3-733 relating to proportional registration of fleet motor vehicles, trailers, semitrailers, or pole trailers shall~~ may not be construed as requiring any motor vehicle, trailer, semitrailer, or pole trailer to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation limited to regular registration, temporary registration, or trip permit or registration.”

Section 141. Section 61-3-721, MCA, is amended to read:

“61-3-721. Proportional registration of fleet motor vehicles, registration periods, application, fee formula, and payment — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to motor vehicle, trailer, semitrailer, or pole trailer registration that is required by the department of transportation.

(2) ~~Each~~ Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must, ~~except as provided in 61-3-318(1) and subsection (6) of this section,~~ be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, “calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31 1st period
- (b) April 1 through June 30 2nd period
- (c) July 1 through September 30 3rd period
- (d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable motor vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable motor vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, arrangement, or declaration entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each motor vehicle, trailer, semitrailer, or pole trailer in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) (a) Each trailer, and semitrailer, and pole trailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.

(b) Each trailer, ~~and~~ semitrailer, *and pole trailer* in the fleet for which registration is requested must be assessed a registration fee ~~equal to five times the amount prescribed by 61-3-321 of \$82.50.~~

(c) Each trailer, ~~or~~ semitrailer, *or pole trailer* must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.

(d) Registration of a trailer, ~~or~~ semitrailer, *or pole trailer* must be renewed on or before the last day of the month for the designated 5-year registration period.

(7) Upon the transfer of ownership of a trailer, ~~or~~ semitrailer, *or pole trailer*, the registration of the trailer, ~~or~~ semitrailer, *or pole trailer* expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.

(8) (a) If the transferor applies for the registration of another trailer, ~~or~~ semitrailer, *or pole trailer* at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer, ~~or~~ semitrailer, *or pole trailer* were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.

(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer, ~~or~~ semitrailer, *or pole trailer* for which the license plates were originally issued.

(c) Upon transfer of the license plates, the registration of the trailer, ~~or~~ semitrailer, *or pole trailer* from which the license plates were transferred expires. The registration for the trailer, ~~or~~ semitrailer, *or pole trailer* must be surrendered to the department of transportation with the application for transfer.

(d) License plates issued for a trailer, ~~or~~ semitrailer, *or pole trailer* under this section may be transferred only to a replacement trailer, ~~or~~ semitrailer, *or pole trailer*. A license plate fee may not be assessed upon transfer of a license plate.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."

Section 142. Section 61-3-722, MCA, is amended to read:

"61-3-722. Registration and identification of proportionally registered motor vehicles — fees — effect of registration. (1) The department shall register each proportionally registered *motor vehicle, trailer, semitrailer, or pole trailer* and issue a license plate or plates, a distinctive ~~sticker decal~~, or other suitable identification device for each *motor vehicle, trailer, semitrailer, or pole trailer* described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, ~~stickers~~ *decal*s, or devices issued. A fee of \$2 must be paid

for each license plate, each ~~sticker~~ *decal*, and each device issued for each proportionally registered *motor vehicle, trailer, semitrailer, or pole trailer*. A fee of \$5 must be paid for each *motor vehicle, trailer, semitrailer, or pole trailer* receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted in April 1988. A registration card must be issued for each proportionally registered *motor vehicle, trailer, semitrailer, or pole trailer*. The registration card must, in addition to other information required by chapter 3, show the number of the license, ~~sticker~~ *decal*, or other device issued for the proportionally registered *motor vehicle, trailer, semitrailer, or pole trailer* and must be carried in the *motor vehicle, trailer, semitrailer, or pole trailer* at all times.

(2) Fleet *motor vehicles, trailers, semitrailers, or pole trailers* registered and identified as fleet *motor vehicles* are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the *motor vehicle, trailer, semitrailer, or pole trailer* may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the *motor vehicle, trailer, semitrailer, or pole trailer* is being operated in conformity with that authority.”

Section 143. Section 61-3-723, MCA, is amended to read:

“61-3-723. Proportional registration not applicable in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet *motor vehicles, trailers, semitrailers, or pole trailers* extended by 61-3-711 through 61-3-733; or by any contract, agreement, arrangement, or declaration made under the authority ~~thereof of 61-3-711 through 61-3-733, shall be~~ is subject to the condition that each fleet *motor vehicle, trailer, semitrailer, or pole trailer* proportionally registered under the authority of 61-3-711 through 61-3-733 ~~shall~~ must also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.”

Section 144. Section 61-3-724, MCA, is amended to read:

“61-3-724. Registration of additional fleet motor vehicles. ~~Vehicles~~ *Motor vehicles, trailers, semitrailers, or pole trailers* acquired by the owner after the commencement of the registration period and subsequently added to a proportionally registered fleet must be proportionally registered by applying the mileage percentage used in the original application for the fleet for the registration period to the regular registration fees due with respect to the *motor vehicle, trailer, semitrailer, or pole trailer* for the remainder of the registration period.”

Section 145. Section 61-3-725, MCA, is amended to read:

“61-3-725. Withdrawal of fleet motor vehicles — procedure, credits, and accounting. (1) If a *motor vehicle, trailer, semitrailer, or pole trailer* is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of transportation of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices that have been issued with respect to that *motor vehicle, trailer, semitrailer, or pole trailer*. If a *motor vehicle, trailer, semitrailer, or pole trailer* is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the

registrant, the unused portion of the gross vehicle weight fees paid with respect to that *motor vehicle, trailer, semitrailer, or pole trailer* must be credited to the proportional registration account of the owner. This unused portion equals the amount paid with respect to the *motor vehicle, trailer, semitrailer, or pole trailer* when it was first proportionally registered in the registration period, reduced by one-twelfth of the total annual gross vehicle weight fee of the *motor vehicle, trailer, semitrailer, or pole trailer* for each calendar month and fraction of a month elapsing between the first day of the month of the current period in which the *motor vehicle, trailer, semitrailer, or pole trailer* was registered and the date the notice of withdrawal is received by the department. This credit must be applied against liability for additional fees due during the registration period or for additional fees due upon audit under 61-3-728. If a credit is less than \$5, it may not be made or entered. ~~In no event~~ *A credit may the amount may not be credited taken* against fees other than those for the registration period; ~~nor may any amount be~~ *and is not* subject to refund.

(2) If the owner replaces a *motor vehicle, trailer, semitrailer, or pole trailer* withdrawn from the fleet at the same time as the withdrawal and the replacement *motor vehicle, trailer, semitrailer, or pole trailer* is of the same or of a lesser weight category than the one withdrawn, the gross vehicle weight fees are transferable to the replacement *motor vehicle, trailer, semitrailer, or pole trailer*. If the transfer is to a smaller *motor vehicle, trailer, semitrailer, or pole trailer*, a credit may not be given or entered."

Section 146. Section 61-3-727, MCA, is amended to read:

"61-3-727. Fleet registration — denial when no reciprocity. The department may refuse to accept proportional registration applications for the registration of *motor vehicles, trailers, semitrailers, or pole trailers* based in; *another jurisdiction* or owned by residents of; *another jurisdiction* if the department finds that the other jurisdiction does not grant similar registration privileges to fleet *motor vehicles, trailers, semitrailers, or pole trailers* based in or owned by residents of this state."

Section 147. Section 61-3-728, MCA, is amended to read:

"61-3-728. Preservation of proportional registration records. An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of 4 years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle, *trailer, semitrailer, or pole trailer* registration laws for joint audits of the owner."

Section 148. Section 61-3-729, MCA, is amended to read:

"61-3-729. Relation to other state laws. The provisions of 61-3-711 through 61-3-733 ~~shall constitute complete~~ *are* authority for the registration of fleet *motor vehicles, trailers, semitrailers, or pole trailers* upon a proportional registration basis without reference to or application of any other statutes of this state ~~except as in this section expressly provided.~~"

Section 149. Section 61-3-730, MCA, is amended to read:

"61-3-730. Suspension of reciprocity benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under

61-3-711 through 61-3-733 to a person who violates any of the conditions or terms of the agreements, arrangements, or declarations or violates the laws of this state relating to motor vehicles, *trailers, semitrailers, or pole trailers*; or rules lawfully adopted thereunder *under those laws*.”

Section 150. Section 61-3-732, MCA, is amended to read:

“61-3-732. Continued validity of existing reciprocity agreements. All reciprocity and proportional registration agreements, arrangements, and declarations relating to *motor vehicles, trailers, semitrailers, or pole trailers* in force and effect as of March 7, 1963, shall continue in force and effect until specifically amended or revoked as provided by law or by such *the agreements, or arrangements, or declarations*.”

Section 151. Section 61-3-733, MCA, is amended to read:

“61-3-733. ~~Law~~ Laws supplemental to motor vehicle, trailer, semitrailer, or pole trailer registration law laws. Sections 61-3-711 through 61-3-732 are supplemental to the motor vehicle, *trailer, semitrailer, or pole trailer* registration ~~law laws~~ of this state.”

Section 152. Section 61-3-736, MCA, is amended to read:

“61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of fees required for registration. (1) (a) The department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in ~~61-3-528 and~~ 61-3-529 on buses, trucks having a manufacturer’s rated capacity of more than 1 ton, and truck tractors and the light vehicle registration fee under ~~61-3-560 and 61-3-561~~ 61-3-321(2) on light vehicles in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax or registration fee on interstate motor vehicle, *trailer, semitrailer, or pole trailer* fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax or registration fee under this part or any other provision of the laws of Montana, the fee in lieu of tax or registration fee on fleet *motor vehicles, trailers, semitrailers, or pole trailers* must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(c) ~~Vehicles~~ *Motor vehicles* subject to the light vehicle registration fee as part of a fleet under this subsection (1) are not subject to the local option *motor* vehicle tax or flat fee imposed under 61-3-537 or 61-3-570.

(2) With respect to a renewal application for a fleet, the fee in lieu of tax and the light vehicle registration fee are imposed for a full year. The department of transportation shall prorate the new fee in lieu of tax in 61-3-529 for motor vehicles, *trailers, semitrailers, or pole trailers* that are proportionally registered, as provided in 61-3-721, and whose annual registration period does not coincide with the calendar year.

(3) ~~Vehicles~~ *Motor vehicles, trailers, semitrailers, or pole trailers* contained in a fleet for which current fees have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of fees for the current registration year. The payment of fleet *motor*

vehicle, *trailer, semitrailer, or pole trailer* fees in lieu of tax, light vehicle registration fees, and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle, *trailer, semitrailer, or pole trailer* fleet.

(4) All fees collected on motor vehicle, *trailer, semitrailer, or pole trailer* fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 153. Section 61-3-737, MCA, is amended to read:

"61-3-737. Situs in state of proportionally registered fleets — collection of fees. (1) For the purposes of this part, any *motor* vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of the light vehicle registration fee or the fee in lieu of tax.

(2) The department of transportation shall collect the fleet *motor* vehicle, *trailer, semitrailer, or pole trailer* registration fees, fees in lieu of tax, and license fees prescribed in this part."

Section 154. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, *motor home*, trailer (except a trailer having an unloaded weight of less than 500 pounds), *travel trailer, semitrailer, pole trailer*, motorcycle, quadricycle, or special mobile equipment that is not registered in the person's name; unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for; and restricted to; one or more of the following vehicle types:

- (i) new motor vehicle;
- (ii) used motor vehicle;
- (iii) new recreational vehicle, *motor home, or travel trailer*;
- (iv) used recreational vehicle, *motor home, or travel trailer*;
- (v) trailer, *semitrailer, pole trailer*, or special mobile equipment; or
- (vi) motorcycle or quadricycle.

(b) The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized; unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

(d) Subject to the provisions of 61-4-124, a dealer's license issued by the department is valid until:

- (i) voluntarily returned to the department for surrender and cancellation upon the cessation of the dealer's business operations; or

(ii) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, *a customer* or otherwise operated by; a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and of a permanent nonresidential building that will be

maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local ~~business-permitting~~ *business-permitting* agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, *motor homes, travel trailers, trailers, semitrailers, pole trailers*, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter; and

(i) if the applicant is applying for a new recreational vehicle dealer's license, *new travel trailer dealer's license, or new motor home dealer's license*, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles, *new motor homes, or new travel trailers*.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, *new or used motor home, new or used travel trailer*, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of \$5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) \$25 for a new motor vehicle dealer's license;

(b) \$25 for a used motor vehicle dealer's license;

(c) \$25 for a new or used recreational vehicle, *motor home, or travel trailer* dealer's license; or

(d) \$25 for a motorcycle or trailer, *semitrailer*, or *pole trailer* dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of \$50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle, *motor home*, or *travel trailer* dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of \$15,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 155. Section 61-4-102, MCA, is amended to read:

"61-4-102. Dealer's license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) (a) Dealer plates designed by the department must be similar to the numbered plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:

(A) the letter "D" for a new motor vehicle dealer;

(B) the letters "UD" for a used motor vehicle dealer; or

(C) the letters "RV" for a new or used recreational vehicle, *motor home*, or *travel trailer* dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of \$25 for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 *motor* vehicle sales for the previous year; plus

(B) 3% of the next 100 *motor* vehicle sales for the previous year; plus

(C) 2% of *motor* vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a *motor* vehicle bearing dealer plates is prima facie evidence that the *motor* vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on *motor* vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and, except as provided in subsection (7)(b), shall file an annual report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

(8) (a) All numbered dealer plates expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 156. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. (1) (a) A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the date of purchase, sale, or consignment and the name and address of:

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer or wholesaler assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the dealer or wholesaler's interest is subordinate, if any.

(b) The vehicle description must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, *pole trailer*, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, *pole trailer*, or special mobile equipment.

(2) The dealer or wholesaler must also have an assigned certificate of ownership or certificate of title from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership, certificates of title, or manufacturer's certificates of origin for *motor* vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for *motor* vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 157. Section 61-4-109, MCA, is amended to read:

"61-4-109. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle held for sale by the dealer and to issue a 20-day permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a *motor* vehicle by the dealer are specifically conditioned on the dealer's satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer's bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and 20-day permits assigned or issued to the dealer are subject to immediate withdrawal and confiscation, upon demand, by the department or by a compliance specialist on behalf of the department and may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer's business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer's license under 61-4-105(2)."

Section 158. Section 61-4-110, MCA, is amended to read:

"61-4-110. Obligation of dealer to pay off liens on motor vehicles accepted in trade or consignment — duties of dealer and secured party. (1) (a) If a dealer accepts a *motor* vehicle in trade from a retail customer as part of the sale of another *motor* vehicle and there is an outstanding loan balance owing on the traded *motor* vehicle, the dealer shall remit payment to the secured party to whom the balance on the traded *motor* vehicle is owed in an amount sufficient

to satisfy the perfected security interest on the traded *motor* vehicle by the earlier of the following dates:

- (i) 21 days from the date of acceptance of the *motor* vehicle in trade; or
- (ii) 15 days from the date of the receipt by the dealer of payment in full from the sale of the traded *motor* vehicle.

(b) If a dealer accepts a *motor* vehicle from an owner for sale upon consignment and there is an outstanding loan balance owing on the consigned *motor* vehicle, the dealer shall remit payment to the secured party to whom the balance on the consigned *motor* vehicle is owed in an amount sufficient to satisfy the perfected security interest on the consigned *motor* vehicle within 15 days from the date of the receipt by the dealer of payment in full for sale of the consigned *motor* vehicle.

(2) A secured party who has been paid in full by a dealer in accordance with the terms of this section shall forward to the department a properly executed release within:

(a) 15 business days after the business day on which the funds are received when the funds are in cash, cashier's check, certified check, teller's check, or other certified source of funds;

(b) 18 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a local originating depository institution; or

(c) 21 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a nonlocal originating depository institution.

(3) For purposes of this section, "business day" means a weekday, excluding any weekday upon which a legal holiday falls."

Section 159. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) Except as provided in 61-4-124(6), a licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle *or trailer* and who operates the *motor* vehicle *or trailer* only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle *or trailer* by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the *motor* vehicle *or trailer* may not be transferred until an application for a certificate of title has been submitted by the dealer to the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle *or trailer* to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the *motor* vehicle *or trailer* to the purchaser, the dealer shall issue a temporary registration permit for the *motor* vehicle *or trailer* and affix the temporary registration permit to the *motor* vehicle *or trailer* in a manner prescribed by the department. The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance. There must be imprinted on the temporary registration permit in bold letters the following

statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS *MOTOR VEHICLE (OR TRAILER)* UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". Unless a durable license plate style placard is issued, one copy of the temporary registration permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b); and a copy must be retained by the dealer for the dealer's file. If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department. It is unlawful for the dealer to issue more than one 20-day temporary registration permit for each *motor vehicle or trailer* sale.

(b) Within 4 working days following the date of delivery of the *motor vehicle or trailer*, the dealer shall forward to the county treasurer of the county where the purchaser resides:

(i) the assigned certificate of title or, if a certificate of title for the *motor vehicle or trailer* has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession;

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-221 and 61-3-322; and

(iii) a copy of the temporary registration permit affixed to the *motor vehicle or trailer* by the dealer.

(c) Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

(d) If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection (2)(b) because the certificate of title *or registration receipt* is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the *motor vehicle or trailer* is considered to have passed to the purchaser as of the date of the delivery of the *motor vehicle or trailer* to the purchaser by the dealer; and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title if requested under 61-3-216(2)(f); and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.

~~(5) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111.~~

Section 160. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a temporary registration permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the temporary registration permit or, if a durable license-plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the temporary registration permit issued under subsection (1)(a) or a copy of the information described in the records concerning a placard;

(ii) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a manufacturer's certificate of origin that shows that the *motor* vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable."

Section 161. Section 61-4-113, MCA, is amended to read:

"61-4-113. New motor vehicles towed into state to be labeled. (1) Any firm, person, corporation, or association or any of ~~their~~ *its* employees offering for sale or carrying on the business of selling new motor vehicles in the state of Montana ~~shall be~~ *is* required to prominently label any motor vehicle ~~which that~~ has been driven under its own power, pushed, towed, or propelled by any other means to sufficiently identify it from other new *motor* vehicles that have not been driven, pushed, or towed and ~~shall be~~ *is* required to furnish the purchaser of ~~any such~~ *the* motor vehicle with a certificate, on a printed form to be furnished by the department upon request by ~~such~~ *the* dealers, showing the actual number of miles the motor vehicle has been driven under its own power and the number of miles the *motor* vehicle has been pushed, towed, or otherwise propelled upon its own wheels. Any firm, person, corporation, or association or any of ~~their~~ *its* employees who ~~fails~~ *fail* to prominently label and issue the certificate or who knowingly issue a certificate that is untrue and calculated to mislead the purchaser ~~is~~ *are* guilty of a misdemeanor.

(2) The provisions of this section do not apply to motor vehicles during the period of time that ~~such~~ *the* motor vehicles are used for bona fide demonstrating purposes."

Section 162. Section 61-4-120, MCA, is amended to read:

"61-4-120. Application for auto auction license — general regulations. (1) A person that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that *motor* vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of \$50,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary registration permits, which may be displayed and used by a buyer to operate an unregistered *motor* vehicle purchased from the auto auction. The temporary registration permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a *motor* vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary registration permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the *motor* vehicle, including its serial number. The

department shall collect a fee of \$10 from the auto auction for each temporary registration permit, and the auto auction may charge a *motor* vehicle purchaser no more than \$10 for the issuance of each temporary registration permit to offset the cost of the temporary registration permit. It is unlawful for the auto auction to issue more than one temporary registration permit for each *motor* vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory *motor* vehicles to and from a point of storage or a point of delivery in this state and to and from the auto auction's place of business, for road testing authorized *motor* vehicles, or for moving *motor* vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the *motor* vehicle. Auto auctions may appoint designated persons, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a *motor* vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary registration permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary registration permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary registration permit issued to a *motor* vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

- (i) the vehicle identification number and engine number, if any; and
- (ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of title at a location on the certificate of title, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate of title between the transferor and transferee. If the certificate of title lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

- (i) name and license number of the auction, along with an indication of the *motor* vehicle year, make, model, and identification number;

- (ii) name, address, and signature of the transferor;
- (iii) name, license number, and signature of the transferee; and
- (iv) date the *motor* vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of title and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206.”

Section 163. Section 61-4-121, MCA, is amended to read:

“61-4-121. Twenty-day temporary registration permit — limitation on issuance and transfer — violation — penalty. (1) (a) A dealer may not issue more than one 20-day temporary registration permit under 61-4-111 or 61-4-112 for each *motor* vehicle sale.

(b) A dealer may not transfer 20-day temporary registration permits to another dealer unless the dealer:

- (i) notifies the department within 3 days of the transfer;
- (ii) identifies to the department the dealer to whom any temporary registration permits have been transferred;
- (iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred temporary registration permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day temporary registration permits for a period of time determined by the department.”

Section 164. Section 61-4-122, MCA, is amended to read:

“61-4-122. Compliance specialists as peace officers. (1) The department may designate and train civilian employees as compliance specialists within the motor vehicle division. Each compliance specialist is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapter 3, parts 1, 2, 3, 4, and 6, and chapter 4.

(2) As a peace officer, a trained compliance specialist may:

- (a) issue citations and make arrests;
- (b) issue summonses;
- (c) accept bail;
- (d) serve warrants of arrest;
- (e) make reasonable inspections of a dealer’s established place of business and *motor* vehicle inventory; and

(f) require production of documents relating to the sale, purchase, exchange, or consignment of any *motor* vehicle currently or previously in a dealer's inventory or displayed for sale by the dealer or relating to any obligation imposed on a dealer under this title.

(3) For purposes of this section, the term "dealer" includes a dealer of any *motor* vehicle type, a wholesaler, or an auto auction, *any of which is* subject to licensure by the department under this chapter."

Section 165. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any *motor* vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a *motor* vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a *motor* vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the *motor* vehicle or is conspicuously displayed within the *motor* vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle, *motor home*, or *travel trailer* dealers, an off-premises display and sale must be conducted within the county of the dealer's licensed location. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more *motor* vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one *motor* vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the *motor* vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the *motor* vehicle is displayed on premises owned or leased by the other business entity and where the other

entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays *motor* vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all *motor* vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any *motor* vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to; *a customer* or *that* otherwise may be operated by; a customer in the regular course of the dealer's business operations.

(b) A dealer ~~must~~ *shall* ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory *motor* vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that *motor* vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 166. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, *used motor homes, used travel trailers*, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a *motor vehicle, recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment* only to a dealer, an auto auction, or another wholesaler. Retail sale of *motor vehicles, recreational vehicles, motor homes, travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment* by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:

(i) an ownership interest in a *motor* vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, the applicant shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any *motor* vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year.

(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and

(e) a bond of \$50,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is \$5, and the license fee is \$25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of *motor* vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is \$5. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more *motor* vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one *motor* vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who cannot, under penalty of law, certify the number of *motor* vehicle sales required under subsection (5)(c) shall pay a fee of \$25 in addition to the fees required in subsection (3).

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year."

Section 167. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate. Demonstrator plates must be issued for each *motor* vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) New and used motor vehicle, ~~or~~ recreational vehicle, *motor home*, or *travel trailer* demonstrator plates may be used on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the *motor* vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the *motor* vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move ~~vehicles~~ *mobile homes and travel trailers* legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) A *motor* vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the *motor* vehicle.

(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 168. Section 61-4-131, MCA, is amended to read:

"61-4-131. Definitions. As used in ~~61-4-131 through 61-4-137, 61-4-141, and 61-4-150~~ this part, the following definitions apply:

(1) *"Broker" means a person engaged in the business of offering to procure or procuring motor vehicles or who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures motor vehicles by negotiating purchases, contracts, sales, or exchanges and who does not store, display, or take ownership of any vehicles for the purpose of selling vehicles.*

~~(1)(2)~~ "Dealer" includes a new motor vehicle dealer as defined in 61-4-201.

~~(2)(3)~~ (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who:

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will or under the laws of intestate succession of this state; or

(B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) (a) *"Established place of business" means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a dealer. A building is actually occupied by a dealer if the dealer's books and records are kept in the building and, except for approved off-premises sales, the dealer's business is transacted within the building.*

(b) *A dealer's established place of business may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101(4)(d) regulating the distance between display lots and the record keeping building are met.*

(c) *The geographic location of the permanent building actually occupied by the dealer or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.*

~~(3) "Motor vehicle" has the same meaning as provided in 61-4-201.~~

~~(4) "New motor vehicle" has the same meaning as provided in 61-4-201.~~

(5) *"Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.*

(6) *"Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers."*

Section 169. Section 61-4-141, MCA, is amended to read:

"61-4-141. Manufacturer's right of first refusal. (1) Regardless of the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor may exercise a right of first refusal to acquire the new *motor* vehicle dealer's assets or ownership. This may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee if all the following requirements are met:

(a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may request the accounting before exercising the manufacturer's or distributor's right of first refusal.

(2) This section does not affect any contractual right of a manufacturer or distributor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of the *motor* vehicles."

Section 170. Section 61-4-143, MCA, is amended to read:

"61-4-143. Unlawful curbstoning of vehicle for sale. (1) Except as provided in 61-4-123, a person may not display or park a motor vehicle offered or posted for sale on real property in which the person does not have a legal interest if the primary purpose of displaying or parking the vehicle on the property is to promote or effect the sale of the vehicle.

(2) This section does not prohibit the display or parking of a *motor* vehicle offered or posted for sale when:

(a) the display or parking of the *motor* vehicle is incidental to actual operation and immediate use of the *motor* vehicle by the *motor* vehicle owner;

(b) the *motor* vehicle owner obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle; or

(c) unless otherwise prohibited by local ordinance, the motor vehicle is displayed on a public street that is adjacent to real property in which the person offering the *motor* vehicle for sale has a legal interest.

(3) A person who violates subsection (1):

(a) is subject to a written warning for the first violation; and

(b) for a second or subsequent violation, is guilty of a misdemeanor and upon conviction may be fined an amount not less than \$250 and not more than \$500.

(4) Each violation of subsection (1) is considered a separate offense.”

Section 171. Section 61-4-202, MCA, is amended to read:

“61-4-202. License requirements — fee exemption. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchiser may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal *motor* vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) (a) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the information required in this section.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft ~~as defined in 23-2-502~~, a snowmobile ~~as defined in 23-2-601~~, or an off-highway vehicle ~~as defined in 23-2-801~~ is not required to pay the \$15 fee required in subsection (2)(a).

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant’s franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) (a) Except as provided in subsection (4)(b), a license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information previously supplied.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft ~~as defined in 23-2-502~~, a snowmobile ~~as defined in 23-2-601~~, or an off-highway vehicle ~~as defined in 23-2-801~~ is not required to pay the \$15 fee required in subsection (4)(a) but is

required to annually apply to renew its license on a form provided by the department.

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic *motor* vehicles, the importer of foreign manufactured *motor* vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign *motor* vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under this part or Title 61, chapter 4, part 1 conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23.”

Section 172. Section 61-4-204, MCA, is amended to read:

“61-4-204. Filing agreement — product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of Title 23 or 61-4-101, file with the department a certified copy of the franchisee’s written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic *motor* vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor’s certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured *motor* vehicles or by an authorized agent of the manufacturer or importer of foreign-made *motor* vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer’s only responsibility for product liability as

between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, ~~as defined in 61-1-132,~~ and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home, ~~as defined in 61-1-130,~~ shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

- (i) the claim was false or fraudulent;
- (ii) the repairs were not properly made; or
- (iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

(6) The dealer shall furnish the purchaser of a new *motor* vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 173. Section 61-4-208, MCA, is amended to read:

"61-4-208. Prohibited acts. (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

- (a) coerce, attempt to coerce, or require a new motor vehicle dealer to:
 - (i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;
 - (ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;
 - (iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;
 - (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;
 - (v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or
 - (vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:
 - (A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or
 - (B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;
 - (b) delay, refuse, or fail to deliver new *motor* vehicles in a reasonable time in a reasonable quantity relative to the new *motor* vehicle dealer's facilities and sales potential after accepting an order from a new *motor* vehicle dealer if the new *motor* vehicles are publicly advertised as being available for immediate delivery; or
 - (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.
- (2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.
- (3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 174. Section 61-4-301, MCA, is amended to read:

"61-4-301. Permit and transit plates for new *motor* vehicles being transported by driveaway or towaway methods — used mobile homes.

(1) (a) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new *motor* vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, ~~where~~ *when* the *motor* vehicles being driven, towed, or transported by the saddle-mount, towbar, or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state ~~but only~~ once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of \$100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(b) A person moving used mobile homes from a point outside the state to a point inside the state may apply to the department for the permit authorized pursuant to subsection (1)(a).

(2) (a) The permitholder may also apply to the department of justice for five sets of transit plates showing the permit number for identification of the *motor* vehicles being transported by the permitholder, and the plates or devices may be used on a *motor* vehicle being driven, towed, or transported by and under the control of the permitholder. The department shall collect the additional sum of \$10 for each set of transit plates or devices applied for and issued.

(b) A permitholder may apply for and receive more than five sets of transit plates in a calendar year if the permitholder can demonstrate, to the satisfaction of the department, that additional sets of plates are needed based on the number of trip fees reported in Montana in the previous calendar year. The department shall collect \$10 for each additional set of transit plates issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year."

Section 175. Section 61-4-302, MCA, is amended to read:

“61-4-302. One-trip fee in addition to permit and plate fees payable quarterly — exception. (1) In addition to the permit and plate fees, a permitholder shall pay to the department of justice a one-trip fee of \$5 per for each driven motor vehicle. The fee ~~shall~~ must be paid within 15 days after the end of the calendar quarter upon forms recommended or supplied by that department.

(2) A person moving new or used mobile homes is not subject to the one-trip fee required by subsection (1).”

Section 176. Section 61-4-306, MCA, is amended to read:

“61-4-306. Exemptions from fees. The fees provided for driveaway or towaway transporters ~~shall~~ do not apply to:

(1) motor vehicles regularly used in the hauling of motor vehicles by the truckaway method or to the motor vehicles ~~so being transported~~ hauled;

(2) motor vehicles operated under dealers’ licenses or plates;

(3) motor vehicles registerable under any other provisions of law;

(4) any person not issued a driveaway or towaway permit.”

Section 177. Section 61-4-307, MCA, is amended to read:

“61-4-307. Display of plates. A motor vehicle or combination of motor vehicles transported over the highways of the state by a permitholder shall display in a prominent position ~~thereon~~ on the motor vehicle the distinctive transit plates or devices, with the towing motor vehicle displaying such the plates or device on the front ~~thereof~~ of the motor vehicle and a towed motor vehicle displaying the plates on the rear ~~thereof~~ of the motor vehicle.”

Section 178. Section 61-4-310, MCA, is amended to read:

“61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) (a) A motor vehicle, subject to license under this title; or a mobile home may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit for the motor vehicle in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title upon application presented to the county treasurer in a form provided by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the personal property taxes on the motor vehicle, if any are due, have been paid, and upon payment of a fee of \$5. The fee must be forwarded to the department of revenue for deposit in the state general fund. The permit is not in lieu of fees and permits required under 61-4-301 and 61-4-302.

(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners.

(2) The permit is for the transit of the motor vehicle or mobile home only, and the motor vehicle or mobile home may not at the time of the transit be used for the transportation of any persons, except the driver, or any property for compensation or otherwise and is for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to this subsection.”

Section 179. Section 61-4-404, MCA, is amended to read:

“61-4-404. Threats prima facie evidence. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer; or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer; that ~~such the~~ manufacturer will cease to sell or will terminate or refuse to enter into a contract to sell motor vehicles to ~~such the~~ dealer unless ~~such the~~ dealer finances the purchase or sale of any ~~such motor vehicle or~~ vehicles only with or through a designated person; ~~shall be~~ is presumed to be made at the direction of and with the authority of ~~such the~~ manufacturer. ~~and shall be~~ *The threat is prima facie evidence of the fact that such the manufacturer has sold or intends to sell such the motor vehicle or vehicles on the condition or under the agreement prohibited by the provisions of this part.*”

Section 180. Section 61-4-501, MCA, is amended to read:

“61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) “Collateral charge” means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) “Consumer” means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) “Incidental damage” means incidental and consequential damage as defined in 30-2-715.

(4) “Manufacturer” has the meaning applied to that word in 61-4-201.

(5) (a) “Motor vehicle” means a vehicle, including the nonresidential portion of a motor home ~~as defined in 61-1-130~~, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

(b) The term does not include:

(i) a truck with 10,000 pounds or more gross vehicle weight rating; or

(ii) ~~Motor vehicle does not include~~ components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) “Reasonable allowance for use” is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the *motor* vehicle is not out of service because of nonconformity. The reasonable allowance for use must be computed by multiplying the total contract price of the *motor* vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the *motor* vehicle traveled prior to the manufacturer’s acceptance of its return.

(7) “Warranty period” means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier.”

Section 181. Section 61-4-503, MCA, is amended to read:

“61-4-503. Replacement for nonconformity to warranty. (1) If after a reasonable number of attempts the manufacturer or its agent or authorized dealer is unable, during the warranty period, to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer, the manufacturer shall replace it with a new motor vehicle of the same model and style and of equal value, unless for reasons of lack of availability ~~such~~ replacement is impossible, in which case the manufacturer shall replace it with a *motor* vehicle of comparable market value.

(2) As an alternative to replacement, the manufacturer may accept return of the new motor vehicle from the consumer upon refund to ~~him~~ *the consumer* of the full purchase price, plus reasonable collateral charges and incidental damages, less a reasonable allowance for the consumer's use of the motor vehicle. The refund ~~shall~~ *must* be paid to the consumer and to a lienholder, if any, in proportion to their interests.”

Section 182. Section 61-4-504, MCA, is amended to read:

“61-4-504. Reasonable number of attempts — presumption. A reasonable number of attempts to conform a new motor vehicle to the applicable express warranties is presumed to have been made for purposes of 61-4-503(1) if:

(1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agent or authorized dealer during the warranty period but the nonconformity continues to exist; or

(2) the *motor* vehicle is out of service because of nonconformity for a cumulative total of 30 or more business days during the warranty period after notification of the manufacturer, agent, or dealer.”

Section 183. Section 61-4-505, MCA, is amended to read:

“61-4-505. Dealer exemption — liability to manufacturer. (1) ~~Nothing in this part imposes~~ *does not impose* any liability on a dealer or ~~creates~~ *create* a cause of action by a consumer against a dealer under 61-4-503.

(2) A dealer is not liable to a manufacturer for any refunds or *motor* vehicle replacements in the absence of evidence indicating that repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.”

Section 184. Section 61-4-506, MCA, is amended to read:

“61-4-506. Provisions nonexclusive — applicability of U.C.C. — defenses. (1) The provisions of this part do not limit the rights or remedies available to a consumer under any other law.

(2) All express warranties arising from the sale of a new motor vehicle are subject to the provisions of Title 30, chapter 2, part 3.

(3) It is an affirmative defense to a claim brought under this part that an alleged nonconformity does not substantially impair the use, market value, or safety of the *motor* vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by the consumer.”

Section 185. Section 61-4-511, MCA, is amended to read:

“61-4-511. Manufacturer’s dispute settlement procedure — certification — prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department of administration. The department of administration shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2). The department of administration shall report to the department of justice all manufacturer’s procedures certified. The department of administration may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer’s informal dispute settlement procedure.

(2) A manufacturer’s informal dispute settlement procedure must afford the consumer or the consumer’s representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the *motor* vehicle available for inspection by a manufacturer’s representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).”

Section 186. Section 61-4-519, MCA, is amended to read:

“61-4-519. Action by arbitrator — decision. (1) The arbitrator shall, as expeditiously as possible, but not later than 60 days after the department of administration has accepted a complaint, render a fair decision based on the information gathered and disclose the arbitrator’s findings and reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the *motor* vehicle;

(b) replacement of the *motor* vehicle with an identical *motor* vehicle or a comparable *motor* vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of administration shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith

in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees.”

Section 187. Section 61-4-525, MCA, is amended to read:

“61-4-525. Notice on resale of replaced *motor* vehicle. A motor vehicle ~~which that~~ is returned to the manufacturer and ~~which that~~ requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the *motor* vehicle was returned. The department of justice may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the *motor* vehicle is no longer defective.”

Section 188. Section 61-5-104, MCA, is amended to read:

“61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person’s return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, *as defined in 61-9-102*, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver’s license to a law enforcement officer in connection with the operation of a railroad ~~locomotive or~~ train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, ~~as defined in 23-2-801~~, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person’s possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Section 189. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm

products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license *because the vehicles are not considered commercial motor vehicles* as provided in ~~61-1-134(2)~~ 61-1-101(5)(b)(ii)."

Section 190. Section 61-5-119, MCA, is amended to read:

"61-5-119. Definitions. (1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, *motor* vehicle modification prescription, and driver education;

(ii) (A) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or

(B) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, *unless the context requires otherwise*:

(a) "cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to the license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after cancellation; and

(b) "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada."

Section 191. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. ~~The~~ Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.5% of each driver's license fee and 62.5% of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall ~~remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."~~

Section 192. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device allowed on first offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving

a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the *ignition interlock* device, *as defined in 61-8-102*, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) (a) Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 193. Section 61-6-102, MCA, is amended to read:

"61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where unless the context clearly indicates a different meaning, the following definitions apply:

(1) "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including

the loss of use ~~thereof of property~~, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by ~~him~~ *the nonresident* of a motor vehicle or the use of a motor vehicle owned by ~~him~~ *the nonresident* in this state.

(4) "Person" means every natural person, firm, partnership, association, or corporation.

~~(4)~~(5) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of ~~said the~~ *proof of financial responsibility*, arising out of the ownership, maintenance, or use of a motor vehicle.

~~(5)~~(6) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

~~(6)~~ "Ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel and in common use by the public."

Section 194. Section 61-6-301, MCA, is amended to read:

"61-6-301. Required motor vehicle insurance — family member exclusion. (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle that is registered and operated in Montana by the owner or with the owner's permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, ~~as defined in 61-1-102~~, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond must be on a form approved by the commissioner of insurance and must be with a surety company authorized to do business in the state.

(4) It is unlawful for a person to operate a motor vehicle upon ways of this state open to the public *as defined in 61-8-101* without a valid policy of liability insurance in effect in an amount not less than that required by 61-6-103 unless

the person has been issued a certificate of self-insurance under 61-6-143, has posted an indemnity bond with the department as provided in this section, or is operating a vehicle exempt under 61-6-303.”

Section 195. Section 61-8-102, MCA, is amended to read:

“61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) *As used in this chapter, unless the context requires otherwise, the following definitions apply:*

(a) *“authorized emergency vehicle” means a vehicle of the fire department or fire patrol, an ambulance, and an emergency vehicle designated or authorized by the department;*

(b) *“bicycle” means:*

(i) *a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or*

(ii) *a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.*

(c) *“business district” means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway;*

(d) *“controlled-access highway” means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway;*

(e) *“crosswalk” means:*

(i) *that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;*

(ii) *any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface;*

(f) *“flag person” means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer’s duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the Montana department of transportation.*

(g) *"highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use;*

(h) *"ignition interlock device" means ignition equipment that:*

(i) *analyzes the breath to determine blood alcohol concentration;*

(ii) *is approved by the department pursuant to 61-8-441; and*

(iii) *is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage;*

(i) (i) *"intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.*

(ii) *When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highway also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.*

(j) *"local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.*

(k) *"noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(5)(b);*

(l) *"official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic;*

(m) *"pedestrian" means any person on foot;*

(n) *"police vehicle" means a vehicle used in the service of any law enforcement agency;*

(o) *"private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons;*

(p) *"residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business;*

(q) *"right-of-way" means the privilege of the immediate use of the roadway;*

(r) *"school bus" has the meaning provided in 20-10-101;*

(s) *"sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use of pedestrians;*

(t) *"traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed; and*

(u) *“urban district” means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.*”

Section 196. Section 61-8-201, MCA, is amended to read:

“61-8-201. Obedience to traffic control devices — exception for certain vehicles and funeral processions. (1) Unless otherwise directed by a peace officer, flag person, crossing guard, or public safety worker, the driver of a vehicle shall obey the instructions of an official traffic control device applicable to the driver’s vehicle and placed in accordance with the provisions of this chapter. The driver of an authorized emergency vehicle, a police vehicle, or a highway patrol vehicle and the driver of a motor vehicle in a funeral procession are exempt from obedience to official traffic control devices *and flag persons* as provided in this chapter.

(2) A provision of this chapter for which traffic control devices *or flag persons* are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official traffic control device *or flag person* is not in proper position and sufficiently legible *or visible* to be seen by an ordinarily observant person. Whenever a particular section of this chapter does not state that official traffic control devices *or flag persons* are required, the section is effective even though traffic control devices are not erected or in place.

(3) Official traffic control devices *or flag persons* that are placed or held in position substantially conforming to the requirements of this chapter and the requirements of the uniform system adopted by the department of transportation pursuant to 61-8-202 are presumed to have been placed by an official act or at the discretion of a lawful authority.”

Section 197. Section 61-8-210, MCA, is amended to read:

“61-8-210. Display of unauthorized signs, signals, or markings. (1) A person may not place, maintain, or display upon or in view of a highway any unauthorized sign, signal, marking, or device that purports to be or is an imitation of or resembles an official traffic control device, that attempts to direct the movement of traffic, or that hides from view or interferes with the effectiveness of any official traffic control device *or flag person*.

(2) A person may not place or maintain and a public authority may not permit commercial advertising on an official traffic control device on a highway, except for business signs included as a part of official motorist service panels or roadside area information panels approved by the department of transportation.

(3) This section does not prohibit the erection of signs upon private property adjacent to highways that give useful directional information and that are of a type that cannot be mistaken for official signs.”

Section 198. Section 61-8-310, MCA, is amended to read:

“61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk, ~~as crosswalk is defined in 61-1-209~~, that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road, ~~as defined in 60-1-103~~.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.”

Section 199. Section 61-8-336, MCA, is amended to read:

“61-8-336. Turning movements and required signals. (1) A person may not turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless the movement can be made with reasonable safety and until an appropriate signal has been given. A person may not turn a vehicle without giving an appropriate signal in the manner provided in this section.

(2) A signal of intention to turn right or left, other than when passing, must be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business *district*, residence *district*, or urban district ~~as defined in 61-1-408 through 61-1-410~~.

(3) A signal of intention to turn right or left, other than when passing, must be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

(4) A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the operator of a vehicle immediately to the rear when there is opportunity to give the signal.”

Section 200. Section 61-8-341, MCA, is amended to read:

“61-8-341. Vehicle entering through highway — definition. (1) The operator of a vehicle shall stop as required by 61-8-344 at the entrance to a

through highway and shall yield the right-of-way to other vehicles that are approaching close enough on the through highway to constitute an immediate hazard. Once the operator has yielded, the operator may proceed and the operators of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicle proceeding into or across the through highway.

(2) *As used in this section, "through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.*

Section 201. Section 61-8-354, MCA, is amended to read:

"61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions — definition. (1) A person may not stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer, highway patrol officer, or official traffic control device, in any of the following places:

- (a) on a sidewalk;
 - (b) in front of a public or private driveway;
 - (c) within an intersection;
 - (d) within 15 feet of a fire hydrant;
 - (e) on a crosswalk;
 - (f) within 20 feet of a crosswalk at an intersection;
 - (g) within 30 feet upon the approach to any flashing beacon, stop sign, or official traffic control device located at the side of a roadway;
 - (h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;
 - (i) within 50 feet of the nearest rail of a railroad crossing;
 - (j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted;
 - (k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
 - (l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - (m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;
 - (n) at any place where official traffic control devices prohibit stopping.
- (2) A public bus stop may not be established in the areas described in subsections (1)(a) through (1)(c) and (1)(e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by the authority having jurisdiction. A bus stop may only be established pursuant to a traffic and engineering study.
- (3) A person may not move a vehicle not lawfully under the person's control into a prohibited area or an unlawful distance away from a curb.

(4) *As used in this section, "safety zone" means the area or space that is officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.*

Section 202. Section 61-8-371, MCA, is amended to read:

"61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions. (1) Except as provided in subsections (2) and (3), a person may not operate a motor vehicle, ~~as defined in 61-1-102,~~ or an off-highway vehicle, ~~as defined in 23-2-801,~~ below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occurs on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land."

Section 203. Definitions. As used in 61-8-380 through 61-8-384, the following definitions apply:

(1) "Funeral escort vehicle" means a motor vehicle properly equipped pursuant to 61-8-381.

(2) "Funeral lead vehicle" means a motor vehicle, including a funeral hearse that is properly equipped pursuant to 61-8-381, leading and facilitating the movement of a funeral procession.

(3) "Funeral procession" means two or more motor vehicles, one of which is carrying the remains of a deceased person, in the daylight hours, including a funeral lead vehicle and a funeral escort vehicle.

Section 204. Section 61-8-380, MCA, is amended to read:

“61-8-380. Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession. (1) Except as provided in subsection (4), pedestrians and operators of motor vehicles shall yield the right-of-way to a motor vehicle that is part of a funeral procession being led by a funeral lead vehicle or a funeral escort vehicle.

(2) After a funeral lead vehicle enters an intersection, the other vehicles in the funeral procession may continue to follow the funeral lead vehicle through the intersection despite any official traffic control device, right-of-way provisions of this chapter, or local ordinance if the operator exercises reasonable care toward any other vehicle or pedestrian. When the funeral lead vehicle arrives at an intersection, it must comply with the requirements of any official traffic control device, right-of-way provision of this chapter, and local ordinance.

(3) Except as provided in subsection (4), a driver of a funeral escort vehicle may direct the drivers of other vehicles in a funeral procession to proceed through an intersection or to make turns or other movements despite any official traffic control device. The driver of a funeral escort vehicle may direct and control the drivers of vehicles not in a funeral procession, including those in or approaching an intersection, to stop, proceed, or make turns or other movements without regard to an official traffic control device. Persons directing traffic shall comply with the ~~provisions of 61-1-411~~ *requirements for a flag person as defined in 61-8-102*. However, use of a funeral escort vehicle is not required.

(4) A vehicle in a funeral procession has the right-of-way at intersections regardless of official traffic control devices provided the driver of that vehicle and the drivers of all vehicles in the funeral procession meet all the requirements of ~~61-1-413 through 61-1-415~~ *[section 203]* and 61-8-380 through 61-8-384, except that an operator of a vehicle in a funeral procession shall yield the right-of-way to an approaching authorized emergency vehicle giving an audible or visual signal or when directed to do so by a highway patrol officer or police officer. This section does not relieve the driver of a vehicle in a funeral procession from the duty to drive with due regard for the safety of all persons using the highway.”

Section 205. Section 61-8-383, MCA, is amended to read:

“61-8-383. Vehicles not in funeral procession. The driver of a vehicle that is not part of a funeral procession may not:

(1) drive between the vehicles forming a funeral procession while they are in motion except when:

(a) authorized to do so by a police officer; or

(b) driving an authorized emergency vehicle emitting an audible or visible signal;

(2) join a funeral procession to secure the right-of-way granted by 61-8-380;

(3) pass a funeral procession on a multiple-lane highway on the funeral procession’s right side unless the funeral procession is in the farthest left lane;

(4) enter an intersection, even if the driver is facing a green traffic control signal, when a funeral procession being conducted in compliance with ~~61-1-413 through 61-1-415~~ *[section 203]* and 61-8-380 through 61-8-384 is proceeding through a red traffic control signal at that intersection as permitted by 61-8-380 unless the driver can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is within the

intersection, the driver of a vehicle facing a green signal may proceed subject to the right-of-way of a vehicle participating in a funeral procession.”

Section 206. Section 61-8-384, MCA, is amended to read:

“61-8-384. Liability. The operator of a vehicle in a funeral procession, including a *funeral* lead vehicle or ~~as a funeral~~ escort vehicle, is not negligent if ~~he the person~~ operates the vehicle in accordance with the requirements of ~~61-1-413 through 61-1-415 [section 203]~~ and 61-8-380 through 61-8-384. When no negligence exists on the part of the operator of a vehicle in a funeral procession, none may be imputed to the funeral director or mortician organizing the procession, to the agent of the funeral director or mortician, or to a member of a local law enforcement agency acting as the agent, with or without compensation, of the funeral director or mortician.”

Section 207. Section 61-8-401, MCA, is amended to read:

“61-8-401. Driving under influence of alcohol or drugs — definitions.

(1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) (a) “Under the influence” means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person’s ability to safely operate a vehicle has been diminished.

(b) *Subject to 61-8-440, as used in this part, “vehicle” has the meaning provided in 61-1-101, except that the term does not include a bicycle.*

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person’s blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 208. Section 61-8-605, MCA, is amended to read:

"61-8-605. Riding on roadways. (1) As used in this section:

(a) *"laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic; and*

(b) *"roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.*

(2) A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when:

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(3) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

(4) Persons riding bicycles upon a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.

(5) A bicycle, as defined in ~~61-1-123(2)~~ 61-8-102(2)(b)(ii), is excluded from the provisions of subsections (2) and (3)."

Section 209. Section 61-8-704, MCA, is amended to read:

“61-8-704. Erection of signs — definition. (1) ~~No~~ The operator of a motor vehicle may *not* be arrested under 61-8-703 unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over 2,500 population, and outside county seats on the primary highways to indicate the legal rate of speed.

(2) Any municipality ~~which~~ *that* uses radio microwaves or ~~other~~ *another* electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of ~~such~~ *that* use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at ~~such~~ other places ~~as may be deemed~~ *considered* necessary by the municipal authorities for the information of the traveling public.

(3) Signs giving notice that the speed of vehicles may be measured by radio microwaves or other electrical device ~~shall~~ *must* be placed as required for speed signs in subsection (1) ~~above~~. However, the absence of ~~such~~ signs ~~shall~~ *may* not in itself invalidate an otherwise proper arrest.

(4) *As used in this section, “arterial street” means any federal or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.”*

Section 210. Section 61-8-713, MCA, is amended to read:

“61-8-713. Injury to or removal of sign or marker a as misdemeanor — penalty. (1) ~~Every~~ A person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of \$250, ~~or~~ by imprisonment in the county jail for a period not exceeding 60 days, or ~~by both such fine and imprisonment in the discretion of the court.~~ This section applies to secondary, state, or interstate highways ~~which~~ *that* are completed and to secondary, state, or interstate highways ~~which~~ *that* are under construction or repair.

(2) ~~No~~ A person ~~shall~~ *may not*, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia ~~thereon~~ *on* or ~~any part thereof of the sign or device.~~

(3) *As used in this section, “railroad sign or signal” means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.”*

Section 211. Section 61-8-801, MCA, is amended to read:

“61-8-801. Purpose — definition. (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial driver licensing with federal regulations based on the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, as amended.

(3) As used in this part, "hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported."

Section 212. Section 61-9-102, MCA, is amended to read:

"61-9-102. Uniformity of interpretation — definitions. (1) This chapter ~~shall must be so~~ interpreted and construed ~~as in order~~ to effectuate its general purpose to make uniform the law of those states which enact it.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "authorized emergency vehicle" has the meaning provided in 61-8-102;

(b) "emergency service vehicle" means an emergency service vehicle of a state, county, or municipal department or a public service vehicle, commercial tow truck, or commercial road service truck, which by the nature of its operation causes a vehicular traffic hazard;

(c) "explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases so that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb;

(d) "farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;

(e) "police vehicle" has the meaning as provided in 61-8-102; and

(f) "right-of-way" has the meaning provided in 61-8-102."

Section 213. Section 61-9-103, MCA, is amended to read:

"61-9-103. Provisions uniform throughout state — power of local authorities. (1) The provisions of this chapter ~~shall must be~~ applicable and uniform throughout this state and in all political subdivisions and municipalities ~~therein in this state~~, and ~~no a~~ local authority ~~shall may not~~ enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized ~~herein in this chapter~~. Local authorities may, ~~however~~, adopt additional traffic regulations ~~which that are~~ not in conflict with the provisions of this chapter.

(2) As used in this section "local authorities" has the meaning provided in 61-8-102."

Section 214. Section 61-9-226, MCA, is amended to read:

“61-9-226. Special restrictions on lamps — definition. (1) A lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps that projects a beam of light of an intensity greater than 300 candlepower must be so directed that the high intensity portion of the beam may not strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) A person may not drive or move a vehicle or equipment upon a highway with a lamp or device displaying a red light visible from in front of the center of the vehicle. This section does not apply to a vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(3) Flashing, blinking, sequential, rotating, or pulsating lights are prohibited except on vehicles that are authorized by this chapter to contain the lights or on a vehicle as a means for indicating a right or left turn or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

(4) License plate decorative lighting that is not original manufacturer's equipment or undercarriage decorative lighting that rotates, flashes, or oscillates or that displays a color authorized by this chapter for use by police vehicles and authorized emergency vehicles may not be illuminated on a vehicle that is operated upon a highway or street.

(5) *As used in this section “school bus” has the meaning provided in 20-10-101.”*

Section 215. Section 61-9-302, MCA, is amended to read:

“61-9-302. Service brakes — adequacy. Every ~~such~~ motor vehicle, trailer, semitrailer, and pole trailer and combination of *these* vehicles, except special mobile equipment as defined in 61-1-104, ~~shall~~ *must* be equipped with service brakes complying with the performance requirements of 61-9-312 and adequate to control the movement of and to stop and hold ~~such~~ *the* vehicle under all conditions of loading and on any grade incident to its operation.”

Section 216. Section 61-9-304, MCA, is amended to read:

“61-9-304. Brakes required on all wheels — exceptions. Every vehicle must be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers may not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, if the vehicle was manufactured before July 25, 1980. However, the trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment ~~as defined in 61-1-104;~~

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes. However, a quadricycle, motorcycle, or motor-driven cycle must be capable of complying with the performance requirements of 61-9-312.”

Section 217. Section 61-9-321, MCA, is amended to read:

“61-9-321. Engine compression brake device — use. (1) A commercial motor vehicle, ~~as defined in 61-1-134,~~ equipped with an engine compression brake device must be equipped with a muffler in good working condition to prevent excessive noise.

(2) An operator of a commercial motor vehicle that has an engine compression brake device with a factory-installed muffler or an equivalent after-market muffler may not be prohibited from using the engine compression brake device.”

Section 218. Section 61-9-402, MCA, is amended to read:

“61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate

hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in ~~61-1-118~~ 61-8-102 may display blue lights, lenses, or globes.

(8) A police ~~car~~ vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715."

Section 219. Section 61-9-405, MCA, is amended to read:

"61-9-405. Windshields required, exception — unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions. (1) A motor vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, must be equipped with a front windshield meeting the requirements of 61-9-408, unless the driver wears safety glasses, goggles, or face shields at all times during the operation of the motor vehicle.

(2) A person may not drive a motor vehicle with:

(a) a sign, poster, substance, or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle that materially obstructs, obscures, or impairs the driver's clear view of the highway or an intersecting highway; or

(b) a windshield that is shattered or in such a defective condition that it materially impairs or obstructs the driver's clear view.

(3) The windshield on a motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield. The device must be maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has suncreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 24%;

(c) the rear window or side windows behind the front seat have suncreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 14%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in 61-9-428, 61-9-429, and this section, the following definitions apply:

~~(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons.~~

~~(b)~~(a) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

~~(c)~~(b) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the suncreening or transparent material to the amount of total light falling on the motor vehicle window.

~~(d)~~(c) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

~~(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.~~

~~(f)~~(d) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

~~(g)~~(e) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

~~(h)~~(f) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

~~(i)~~(g) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Except as provided in subsection (7), subsection (4) applies to all vehicles that are equipped with tinted windows, including windows with less than 100% light transmission to which additional sunscreening material has been applied.

(7) Subsection (4) does not apply to a multipurpose vehicle that is equipped with tinted windows that were installed by the manufacturer of the vehicle or to a hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under 61-9-428. A certificate of waiver must be issued by the department for a vehicle that was registered in this state on October 1, 1991, and was equipped with a

sunscreening device or other material prohibited under subsection (4) on October 1, 1991.”

Section 220. Section 61-9-406, MCA, is amended to read:

“61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment — definitions. (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall “all season m&s” (or “all season mud and snow”), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) The department of transportation and local authorities, *as defined in 61-8-102*, in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(5) If the department of transportation determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

(6) Equipment required by subsection (5)(b) or (5)(c) must conform to rules established by the department of justice.

(7) The department of transportation shall place and maintain signs and other traffic control devices on a highway designated under subsection (5) that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction

equipment will suffice, the requirement is applicable to tires on driver wheels of one axle, *as defined in 61-10-104*, of a vehicle, including embedded tires. The signs or traffic control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear.

(8) *As used in this section:*

(a) *“metal tire” means a tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material; and*

(b) *“pneumatic tire” means a tire in which compressed air or nitrogen is designed to support the load.”*

Section 221. Section 61-9-412, MCA, is amended to read:

“61-9-412. Display of warning devices when vehicle disabled. (1) Whenever ~~any~~ a motor truck, passenger bus, truck, tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder ~~thereof of a highway~~ outside of any municipality at any time when lighted lamps are required on vehicles, the driver of ~~such that~~ vehicle shall display the following warning devices upon the highway during the time the vehicle is ~~so~~ disabled on the highway except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector ~~shall must~~ be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon ~~thereafter~~ as possible *after complying with subsection (1)(a)*, but ~~in any event~~ within the burning period of the fusee (15 minutes), the driver shall place three liquid burning flares (pot torches), ~~or~~ three lighted red electric lanterns, or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) one approximately 100 feet from the disabled vehicle in the center of the lane occupied by ~~such the~~ vehicle and toward traffic approaching in that lane;

(ii) one approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by ~~such the~~ vehicle;

(iii) one at the traffic side of the disabled vehicle not less than 10 feet rearward or forward ~~thereof of the vehicle~~ in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subsection (1)(b)(i) ~~of this section~~, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within 500 feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction ~~shall must~~ be ~~so~~ placed ~~as in order~~ to afford ample warning to other users of the highway but in no case less than 500 feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) ~~shall must~~ be placed as follows:

(a) one at a distance of approximately 200 feet from the vehicle, in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;

(b) one at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;

(c) one at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder ~~thereof~~ *of a highway* outside of any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

(5) (a) Whenever ~~any~~ *a* motor vehicle used in the transportation of explosives, ~~or any~~ *a* cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or ~~any~~ *a* motor vehicle using compressed gas as a fuel; is disabled upon any highway of this state at any time or place mentioned in subsection (1) ~~of this section~~, the driver of ~~such~~ *the* vehicle shall immediately display the following warning devices:

~~(a)~~ one red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two red electric lanterns or portable red reflectors, one placed approximately 100 feet to the front and one placed approximately 100 feet to the rear of the disabled vehicle in the center of the traffic lane occupied by ~~such~~ *the* vehicle;

(b) ~~flares~~ *Flares*, fusees, or signals produced by flame ~~shall~~ *may* not be used as warning devices for disabled vehicles of the type mentioned in this subsection (5).

(6) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section ~~shall~~ *must* conform with the *applicable* requirements of 61-9-411 ~~applicable thereto~~.

(7) *As used in this section, "flammable liquid" means any liquid that has a flash point of 70 degrees Fahrenheit or less as determined by a Tagliabue or equivalent closed cup test device."*

Section 222. Section 61-9-415, MCA, is amended to read:

"61-9-415. Slow-moving vehicles. (1) It is unlawful for a person to operate on a state highway, a farm, rural, or county road, or a city street of this state a slow-moving vehicle or equipment, an animal-drawn vehicle, or any other machinery, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flag person, *as defined in 61-8-102*, or clearly visible warning signs, that normally travels or is normally used at a speed of less than 25 miles an hour, unless there is displayed on the rear of the vehicle an emblem as provided in subsection (2). The requirement of the emblem is in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) must be of substantial construction and must be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and a height of 12 inches. The triangle must be bordered with reflective red strips having a minimum width of 1 3/4 inches, with the vertices of the overall triangle truncated so that the remaining height is a minimum of 14 inches. The emblem must be mounted on the rear of the vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway and must be maintained in a clean, reflective condition.

(3) In addition to the requirements in subsection (2), on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with 61-8-303 does not have a clear lane for passing as required by 61-8-325, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity and when a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

(4) On an interstate highway or on any other four-lane highway, a slow-moving vehicle, subject to the requirements of this section, must be driven in the right lane as far to the right as possible, including the shoulder of the highway."

Section 223. Section 61-9-426, MCA, is amended to read:

"61-9-426. Air-conditioning equipment — use of flammable refrigerant prohibited. (1) Air-conditioning equipment must be maintained with due regard for the safety of the occupants of the vehicle, service technicians, and the public.

(2) Air-conditioning equipment may contain only refrigerant that has been included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air-conditioning substitute for chlorofluorocarbon-12 pursuant to 42 U.S.C. 7671k(c).

(3) A person may not equip or maintain a motor vehicle or special mobile equipment with air-conditioning equipment or refrigerants that do not comply with the requirements of this section.

(4) As used in 61-9-427 and this section, "air-conditioning equipment" means mechanical, belt-driven, vapor compression refrigerant equipment that is used to cool the driver's compartment or passenger compartment of a motor vehicle, ~~as defined in 61-1-102~~, or special mobile equipment, ~~as defined in 61-1-104~~."

Section 224. Section 61-10-102, MCA, is amended to read:

"61-10-102. Width — definition. (1) Except as provided in subsection (2), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(4) For the purposes of this section, ~~"county road" has the same meaning as the term is defined in 60-1-103~~ *"flag vehicle" means a vehicle equipped as required by law or by department of transportation rule to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs must be removed.*

Section 225. Section 61-10-104, MCA, is amended to read:

"61-10-104. Length — definitions. (1) A single truck, bus, or self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length or 61 feet in combined trailer length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth

wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), and this combination may not have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturer's rated capacity" may not tow more than one trailer or semitrailer, and this combination may not have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (5)(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(2), does not apply to the vehicle combination described in this subsection (5)(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Axle" means a transverse beam that is the common axis of rotation of one or more wheels and that, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

~~(a)~~(b) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

~~(b)~~(c) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

~~(c)~~(d) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

~~(d)~~(e) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

Section 226. Section 61-10-123, MCA, is amended to read:

"61-10-123. Haystack movers. (1) A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to 61-10-121 through 61-10-127, except as follows: *provided in subsections (2) through (8).*

~~(1)~~(2) The vehicle, loaded or unloaded, may not exceed 55 feet in length or 20 feet in width.

~~(2)~~(3) A single load may not be moved on the vehicle a distance greater than 75 miles from the point of origin on public roads.

~~(3)~~(4) When the vehicle is hauling a load, it ~~shall~~ *must* be accompanied by two pilot cars. Each car ~~shall~~ *must* be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One car ~~shall~~ *must* precede the vehicle by not less than 100 yards or more than one-fourth mile, and one ~~shall~~ *car must* follow the vehicle at a distance not less than 100 yards or more than one-fourth mile. The following pilot car ~~shall~~ *must* be in radio contact with the vehicle at all times.

~~(4)~~(5) The speed of the vehicle ~~shall~~ *must* be reasonable and proper but not in excess of 35 miles per hour.

~~(5)~~(6) The vehicle ~~shall~~ *may* be operated only between the hours of sunrise and sunset.

~~(6)~~(7) The vehicle may not be operated on an interstate or *a* controlled-access highway *as defined in 61-8-102.*

~~(7)~~(8) A term or blanket permit may be issued for the vehicle."

Section 227. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds — authority to inspect diesel-powered vehicles. (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles ~~as defined in 61-1-132,~~ *travel trailers, or motor homes,* by means of either portable or stationary scales and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds

GVW and recreational vehicles ~~as defined in 61-1-132~~ (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation who is appointed pursuant to 61-12-201 has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203;

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained; and

(c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

(7) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement, pursuant to the authority provided in subsection (6)(c), of the provisions of Title 15, chapter 70, part 3, and on any impacts that enforcement has had on the state special revenue fund."

Section 228. Section 61-10-148, MCA, is amended to read:

“61-10-148. Disposition of fines and forfeited bonds. (1) Except as provided in 61-12-701 and subsection (2) of this section, all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the ~~department of revenue~~ *state*, as provided in 15-1-504, for deposit in the state general fund. This subsection does not apply to fines and forfeited bonds paid to justices’ courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be deposited in the state general fund.”

Section 229. Section 61-10-206, MCA, is amended to read:

“61-10-206. Special fees — certain farm vehicles. (1) Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there must be paid and collected annually a fee equal to 35% of the fees provided in 61-10-201 on:

(a) motortrucks owned and operated by ranchers or farmers in:

(i) the transportation of their own ranch, farm, orchard, or dairy products from point of production to market;

(ii) the transportation of timber harvested on their own ranch, farm, orchard, or dairy from point of harvest to market;

(iii) the transportation of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy;

(iv) the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy; or

(v) the transportation of supplies or commodities to be used on the farm, orchard, or dairy; and

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture.

(2) The minimum fee is \$6.

(3) *A motor vehicle or trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment.”*

Section 230. Section 61-10-225, MCA, is amended to read:

“61-10-225. Disposition of fees collected by county treasurer. The county treasurer shall transmit the fees provided for in 61-10-222 to the ~~department of revenue~~ *state*, as provided in 15-1-504, for deposit to the credit of the department of transportation in the highway revenue account. The remittance must be made on forms furnished to the county treasurer by the department of transportation.”

Section 231. Section 61-11-203, MCA, is amended to read:

“61-11-203. Definitions. As used in this part, the following definitions apply:

(1) “Conviction” means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having

committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as ~~defined~~ *described* in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points; *however* (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, ~~as the term is defined in 61-1-201.~~

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver

licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.”

Section 232. Section 61-12-101, MCA, is amended to read:

“61-12-101. Powers of local authorities to regulate traffic. The provisions of ~~chapter~~ *chapters* 8 and ~~chapter~~ 9 ~~shall~~ *may* not be ~~deemed~~ *considered* to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles ~~thereon be moved on those highways to move~~ in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway, *as defined in 61-8-341*, and requiring that all the vehicles stop before entering or crossing the ~~same~~ *highway*, designating any intersection, *as defined in 61-8-102*, as a stop intersection, and requiring all vehicles to stop at one or more entrances to ~~such~~ *those* intersections;
- (7) restricting the use of highways as authorized in 61-10-128(2);
- (8) regulating the operation of bicycles, *as defined in 61-8-102*, and requiring the registration and licensing of ~~same~~ *bicycles*, including the requirement of a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
- (10) altering the speed limits as authorized ~~herein in this part~~;
- (11) regulating the driving of vehicles by ~~any~~ *a* person who is ~~an~~ *a* habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree ~~which~~ *that* renders ~~him~~ *the person* incapable of safely driving a vehicle within the incorporated limits of ~~any~~ *a* city or town;
- (12) regulating or prohibiting ~~any~~ *a* person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of ~~any~~ *a* city or town;
- (13) regulating or prohibiting the driving of vehicles by ~~any~~ *a* person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of ~~any~~ *a* city or town;
- (14) enacting as ordinances any ~~and all provisions~~ *provision* of chapter 8 or ~~chapter~~ 9 and any ~~and all~~ *other laws* *law* regulating traffic, pedestrians, vehicles, and operators ~~thereof of vehicles~~; *that are* not in conflict with state law or federal regulations and ~~to enforce~~ *enforcing* the ~~same~~ *ordinances* within their jurisdiction.”

Section 233. Section 61-12-102, MCA, is amended to read:

“61-12-102. Private parking services — parking citations. (1) As used in this section, the following definitions apply:

(a) "Local government" means a municipality, if the private parking service operates parking services within a municipality, or a county, if ~~such~~ *the* services are not operated within a municipality.

(b) "Private parking service" means the service of providing areas for parking motor vehicles, ~~as defined in 61-1-102~~, by the general public for compensation and includes ~~such~~ *those* services conducted:

(i) on private property; or

(ii) on public property under contract or agreement with the local government.

(2) A local government may by ordinance allow a private parking service to impound a motor vehicle. A motor vehicle may not be impounded by attaching a device that makes the motor vehicle immobile.

(3) A private parking service may enter into an agreement with the local government to authorize employees of the private parking service to issue citations for parking violations as defined by state, municipal, or county laws, ~~which that~~ occur within the boundaries of the private parking service's parking areas. All ~~such~~ citations must be considered within the jurisdiction of the local government and must be handled in the same manner as citations issued by peace officers ~~thereof of the local government.~~

Section 234. Section 61-13-103, MCA, is amended to read:

"61-13-103. Seatbelt use required — exceptions. (1) A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt or, if 61-9-420 applies, is properly restrained in a child safety restraint.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that the occupant is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle ~~as defined in 61-1-105~~ or a motor-driven cycle ~~as defined in 61-1-106~~;

(d) an occupant of a vehicle licensed as special mobile equipment ~~as defined in 61-1-104~~; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law."

Section 235. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of money collected. All money received from the sale of junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the ~~department of revenue~~ *state*, as provided in 15-1-504. The money must be used for the control,

collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles.”

Section 236. Section 76-2-202, MCA, is amended to read:

“76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, “manufactured housing” means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or house trailer, as defined in ~~61-1-501~~ 61-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.”

Section 237. Section 76-2-302, MCA, is amended to read:

“76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, “manufactured housing” means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in ~~61-1-501~~ 61-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.”

Section 238. Section 87-2-803, MCA, is amended to read:

“87-2-803. Persons with disabilities — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (8). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (8). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in ~~61-1-202~~ 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the

permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(6) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(7) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(8) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(9) Certification by a licensed physician under subsection (8) must be on a form provided by the department.

(10) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3)."

Section 239. Section 87-3-101, MCA, is amended to read:

"87-3-101. General restrictions. Except as provided in 87-2-803(4), it is unlawful for anyone to hunt or attempt to hunt any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in ~~61-1-202~~ *61-1-101*, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight, spotlight or other artificial light, trap, snare (except as allowed in 87-3-127 and 87-3-128), salt lick, or bait."

Section 240. Repealer. Sections 23-2-516, 23-2-517, 23-2-518, 23-2-626, 23-2-803, 23-2-817, 61-1-102, 61-1-103, 61-1-104, 61-1-105, 61-1-106, 61-1-107, 61-1-108, 61-1-109, 61-1-110, 61-1-111, 61-1-112, 61-1-113, 61-1-114, 61-1-115,

61-1-116, 61-1-117, 61-1-118, 61-1-119, 61-1-120, 61-1-121, 61-1-123, 61-1-124, 61-1-125, 61-1-126, 61-1-127, 61-1-128, 61-1-129, 61-1-130, 61-1-131, 61-1-132, 61-1-133, 61-1-134, 61-1-135, 61-1-136, 61-1-137, 61-1-138, 61-1-139, 61-1-140, 61-1-141, 61-1-142, 61-1-201, 61-1-202, 61-1-203, 61-1-204, 61-1-205, 61-1-206, 61-1-207, 61-1-208, 61-1-209, 61-1-210, 61-1-211, 61-1-212, 61-1-301, 61-1-302, 61-1-303, 61-1-304, 61-1-305, 61-1-306, 61-1-307, 61-1-308, 61-1-309, 61-1-310, 61-1-311, 61-1-313, 61-1-314, 61-1-315, 61-1-316, 61-1-317, 61-1-318, 61-1-319, 61-1-320, 61-1-321, 61-1-401, 61-1-402, 61-1-403, 61-1-404, 61-1-405, 61-1-406, 61-1-407, 61-1-408, 61-1-409, 61-1-410, 61-1-411, 61-1-412, 61-1-413, 61-1-414, 61-1-415, 61-1-501, 61-1-502, 61-1-503, 61-1-504, 61-1-505, 61-1-506, 61-1-507, 61-1-508, 61-1-509, 61-1-510, 61-1-511, 61-1-512, 61-1-513, 61-1-514, 61-1-515, 61-1-601, 61-1-602, 61-1-603, 61-1-604, 61-3-521, 61-3-522, 61-3-523, 61-3-527, 61-3-528, 61-3-530, 61-3-560, and 61-3-561, MCA, are repealed.

Section 241. Codification instruction. [Section 203] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 203].

Section 242. Coordination instruction. If both House Bill No. 752 and [this act] are passed and approved, section 61-3-204 must read as follows:

“61-3-204. Replacement certificate of title — application. (1) If a certificate of title is lost, stolen, destroyed, mutilated, or becomes illegible or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner, as shown on the electronic record of title, may apply for and request the department to issue a replacement certificate of title. The application must include satisfactory evidence of the facts requiring the replacement certificate of title and be accompanied by a fee of ~~\$10~~ *\$11*. Of the ~~\$10~~ *\$11* fee, \$5 must be deposited in the state general fund in accordance with 15-1-504, ~~and the remaining \$5 must be forwarded to the department for deposit deposited in the motor vehicle information technology system account provided for in 61-3-550, and the remaining \$1 must be deposited in the court information technology improvement program account provided for in [section 5 of House Bill No. 752].~~

(2) Each replacement certificate of title issued by the department must contain the following statement: “This replacement voids any previously issued title.””

Section 243. Coordination instruction. If both House Bill No. 275 and [this act] are passed and approved, then the code commissioner shall change all references to vehicle in subsection (2)(b)(iii) of 61-3-208 in House Bill No. 275 to references to motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile.

Section 244. Coordination instruction. If both Senate Bill No. 79 and [this act] are passed and approved, then the code commissioner shall change all references to vehicle in subsection (1) of 61-3-460 in Senate Bill No. 79 to references to motor vehicle.

Section 245. Coordination instruction. If both Senate Bill No. 68 and [this act] are passed and approved, then [section 4] of Senate Bill No. 68 must read as follows:

“NEW SECTION. Section 4. Property subject to registration fee. The following property that is subject to a registration fee is exempt from property taxation:

- (1) truck canopy covers or toppers and campers;

- (2) motor homes;
- (3) all watercraft;
- (4) all trailers, semitrailers, pole trailers, and travel trailers as those terms are defined in 61-1-101;
- (5) all vehicles registered under 61-3-456;
- (6) (a) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and
- (b) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (6)(a);
- (7) motorcycles and quadricycles; and
- (8) light vehicles as defined in 61-1-101."

Section 246. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2006.

(2) [Section 4 and this section] are effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 543

[SB 296]

AN ACT PROVIDING AN ALTERNATIVE METHOD FOR THE OWNER OF A PARCEL OF LAND OF 20 ACRES OR MORE BUT LESS THAN 160 ACRES TO HAVE THE PARCEL VALUED, ASSESSED, AND TAXED AS AGRICULTURAL LAND UNDER CERTAIN CONDITIONS; AMENDING SECTION 15-7-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(iii) Parcels of land of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i) may also be valued, assessed, and taxed as agricultural land if the owner:

(A) applies to the department requesting classification of the parcel as agricultural;

(B) verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in subsection (1)(b)(iii)(C); and

(C) verifies that:

(I) the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production; and

(II) property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

(III) the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use."

Section 2. Effective date — applicability. [This act] is effective January 1, 2006, and applies to tax years beginning after December 31, 2005.

Approved April 28, 2005

CHAPTER NO. 544

[SB 326]

AN ACT REVISING THE LAW ON EXCAVATION NEAR UNDERGROUND FACILITIES; PROVIDING FOR SPECIFIC DAMAGE FEES; SETTING A DEADLINE FOR PAYMENT OF FEES; ALLOWING FOR JUDICIAL REVIEW OF FEES LEVIED; DESIGNATING THE USE OF FEES COLLECTED; PROVIDING FOR THE MAINTENANCE OF DAMAGE INCIDENT HISTORIES; AND AMENDING SECTIONS 69-4-501 AND 69-4-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property;

or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

(6) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(7) *"Incident" means a violation of the provisions of 69-4-503(1) by an excavator that, at a single location on a single day, results in damage to an underground facility or the property of a third party or in bodily injury or death to any person other than the excavator.*

(8) *"Incident history" means the total number of incidents experienced by an excavator in the 5 years preceding the most recent incident. The incident history must be used to determine damage fees for violation of 69-4-503(1).*

~~(7)~~(9) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

~~(8)~~(10) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

~~(9)~~(11) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location or absence of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility and the width of the facility if it is greater than 6 inches.

~~(10)~~(12) "One-call notification center" means a service through which a person may request a locating and marking of underground facilities.

~~(11)~~(13) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal representative of the listed entities.

~~(12)~~(14) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

~~(13)~~(15) (a) "Underground facility" means a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electrical energy, oil, gas, or other substances. The term includes but is not

limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

(b) The term does not include shallow underground water systems designed to irrigate lawns, gardens, or other landscaping."

Section 2. Section 69-4-505, MCA, is amended to read:

"69-4-505. Liability for damages to underground facilities. (1) *(a) If any underground facility is damaged by ~~any person~~ an excavator who has failed to obtain information as to its location as provided in 69-4-503, then ~~such the person excavator shall be~~ is liable to the owner of the underground facility for the entire cost of the repair of ~~such the~~ facility. The excavator is also liable to the underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) for a damage fee. Damage fees must be assessed as follows:*

(i) 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident;

(ii) 50% of the total cost of repairing the underground facility not to exceed \$500 for the second incident; and

(iii) \$1,000 for the third and each subsequent incident.

(b) An underground facility owner may levy only one fee for each incident.

(c) If there is more than one underground facility affected by an incident, then each underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) may levy one damage fee for that incident.

(2) Payment of costs and fees described in this section is due within 30 days of billing by the owner of the underground facility. The underground facility owner may enforce collection in a court of competent jurisdiction.

(2)(3) If information requested pursuant to 69-4-503 is not provided within the time specified ~~therein in that section~~, ~~any person~~ excavators damaging or injuring underground facilities ~~shall are~~ not be liable for ~~such that~~ damage or injury, unless caused by ~~his~~ their negligence, and are not liable for the damage fees assessed under subsection (1).

~~(3)(4)~~ The act of obtaining information as required by this part ~~shall~~ does not excuse ~~any person~~ an excavator making any excavation from doing so in a careful and prudent manner, nor ~~shall does~~ it excuse ~~such the person excavator~~ from liability for any damage or injury resulting from ~~his~~ the excavator's negligence."

Section 3. Judicial review. An excavator subject to repair charges and damage fees described in 69-4-505 may have these costs reviewed by a court of competent jurisdiction.

Section 4. Disposition of damage fees collected. (1) Except as provided in subsection (2), damage fees collected by owners of underground facilities must be distributed to the appropriate one-call notification center. The damage fee must be used to fund training and educational programs and materials for excavators and the general public regarding the one-call notification system.

(2) The underground facility owner is not liable for the distribution of damage fees to the one-call notification center in the event that those fees are not collected from the excavator.

Section 5. Incident histories. Owners of underground facilities shall report incidents to the appropriate one-call notification center that is

responsible for maintaining incident histories of violators. These incident histories must be available for public inquiry.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to [sections 3 through 5].

Approved April 28, 2005

CHAPTER NO. 545

[SB 345]

AN ACT REVISING THE LAW RELATING TO THE URBAN RENEWAL AND TAX INCREMENT FINANCING; ALLOWING THE GOVERNING BODY OF A MUNICIPALITY TO RETAIN CERTAIN LOAN FUNDS RELATED TO A TERMINATED TAX INCREMENT FINANCING PROVISION FOR THE PURPOSES OF THE URBAN RENEWAL PLAN; PROVIDING FOR AGREEMENTS ESTABLISHING A MINIMUM VALUE FOR CERTAIN PROPERTY IN AN URBAN RENEWAL AREA; ALLOWING FOR AN ADJUSTMENT TO BASE TAXABLE VALUE; ESTABLISHING A TAX DEFICIENCY LIEN; AMENDING SECTIONS 7-15-4292, 7-15-4293, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4292, MCA, is amended to read:

“7-15-4292. Termination of tax increment financing — exception. (1) The tax increment provision terminates upon the later of:

(a) the 15th year following its adoption ~~or, if the tax increment provision was adopted prior to January 1, 1980, upon the 17th year following adoption;~~ or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) ~~(a) Any~~ *Except as provided in subsection (2)(b), any* amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the district.

(b) *Upon termination of the tax increment provision, a municipality may retain and use in accordance with the provisions of the urban renewal plan:*

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment;
or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area or the industrial district and must be paid into the funds of the respective taxing bodies.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions adopted after January 1, 1980, and the 17th anniversary of tax increment provisions adopted prior to January 1, 1980. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.”

Section 2. Section 7-15-4293, MCA, is amended to read:

“7-15-4293. Adjustment of base taxable value following change of law. (1) If the base taxable value of an urban renewal area or an industrial district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue ~~or its agents~~ to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) *If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change.*”

Section 3. Section 15-10-420, MCA, is amended to read:

“15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year’s value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided

in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

~~(a)~~(i) annexation of real property and improvements into a taxing unit;

~~(b)~~(ii) construction, expansion, or remodeling of improvements;

~~(c)~~(iii) transfer of property into a taxing unit;

~~(d)~~(iv) subdivision of real property; and

~~(e)~~(v) transfer of property from tax-exempt to taxable status.

(b) *Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.*

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

~~(b)(c)~~ For the purpose of subsection ~~(3)(d)~~ (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

~~(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.~~

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy

calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Assessment agreements. (1) A municipality may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area, industrial district, aerospace transportation and technology district, or any other area or district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to [section 5] and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the municipality. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

(a) the date on which conditions in the agreement for termination are satisfied;

(b) the termination date specified in the agreement; or

(c) the date when the tax increment is no longer paid to the municipality under 7-15-4292.

(7) Nothing in this section limits a municipality's authority to enter into contracts other than tax deficiency agreements as described in this section.

Section 5. Tax deficiency lien. A municipality has a lien for tax deficiency payments as described in a properly filed agreement for tax deficiency payment pursuant to [section 4]. The lien has the same priority as a lien for general property taxes. Lien proceeds must be disbursed pursuant to 7-15-4286(2).

Section 6. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 7, chapter 15, part 42, and the provisions of Title 7, chapter 15, part 42, apply to [section 4].

(2) [Section 5] is intended to be codified as an integral part of Title 71, chapter 3, part 15, and the provisions of Title 71, chapter 3, part 15, apply to [section 5].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 546

[SB 407]

AN ACT REVISING THE MINOR IN POSSESSION LAW; AND AMENDING SECTION 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

~~(a)~~ (a) for a first offense,:

(i) shall be fined an amount ~~not to exceed \$200, and may not less than \$100 or more than \$300;~~

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9);

~~(b)~~ (b) for a second offense,:

(i) shall be fined an amount ~~not to exceed \$200 and may not less than \$200 or more than \$600;~~

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

~~(c)~~ (c) for a third or subsequent offense,:

(i) shall be fined an amount ~~not to exceed \$500 and~~; *not less than \$300 or more than \$900*;

~~(i)(ii)~~ *may* shall be ordered to perform 60 hours of community service;

~~(ii)(iii)~~ shall be ordered to complete *and pay for* an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; ~~and~~ *and*

~~(iii)(iv)~~ in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one

counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), ~~or~~ (2)(a)(iii), *or* (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection ~~(3)(e)(ii)~~ (3)(b)(iii) *or* (3)(c)(iii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services. (See compiler's comments for contingent termination of certain text.)"

Approved April 28, 2005

CHAPTER NO. 547

[SB 423]

AN ACT REVISING ALCOHOL IGNITION INTERLOCK DEVICE LAWS AND LAWS GOVERNING ISSUANCE OF CERTAIN DRIVER'S LICENSES AFTER REVOCATION; REQUIRING CERTAIN DRIVER'S LICENSES TO CONVEY THE TERM OF PROBATION RESTRICTIONS IMPOSED ON THE

LICENSEE FOR OPERATION OF A MOTOR VEHICLE; REQUIRING AN ALCOHOL IGNITION INTERLOCK DEVICE PROVIDER TO INCLUDE IN A LEASE AGREEMENT A WARNING REGARDING TAMPERING WITH OR MISUSE OF THE DEVICE; REMOVING CERTAIN CONDITIONS UNDER WHICH A COURT MAY RESTRICT A PERSON TO DRIVING ONLY A MOTOR VEHICLE WITH AN IGNITION INTERLOCK DEVICE; AND AMENDING SECTIONS 61-5-208, 61-8-441, AND 61-8-442, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-208, MCA, is amended to read:

“61-5-208. Period of suspension or revocation — probationary license — ignition interlock device ~~allowed on first offense~~ restrictions — notation on driver’s license. (1) The department may not suspend or revoke a driver’s license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver’s license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person’s driver’s license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The

department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) (a) Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(6) (a) *A driver's license that is issued after a license revocation to a person described in subsection (6)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.*

(b) *The provisions of subsection (6)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:*

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 2. Section 61-8-441, MCA, is amended to read:

"61-8-441. Department rules regarding ignition interlock devices — ignition interlock device provider requirements. (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based upon federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; *and*

(i) be manufactured by a person who is adequately insured for product liability; ~~and~~

(j) ~~have a label affixed in a prominent location~~

(4) *An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.*

Section 3. Section 61-8-442, MCA, is amended to read:

“61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may, for a person convicted of a first offense under 61-8-401 or 61-8-406 and granted a probationary license, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the period that the person is granted a probationary license and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) ~~the court determines that approved ignition interlock devices are reasonably available; and~~

(b) ~~the person's blood alcohol concentration at the time of the arrest was 0.16 or greater.~~

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subjected to the forfeiture procedure provided under 61-8-421; or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device ~~if the court determines that approved ignition interlock devices are reasonably available.~~

(3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department.”

Approved April 28, 2005

CHAPTER NO. 548

[SB 428]

AN ACT PROVIDING FOR A STATEWIDE 2-1-1 TELEPHONE NUMBER FOR ACCESS AND REFERRAL TO COMMUNITY DISASTER, EMERGENCY, SAFETY, HEALTH, AND HUMAN SERVICES INFORMATION; PROVIDING FOR A MONTANA 2-1-1 COMMUNITY COALITION TO SERVE IN AN ADVISORY CAPACITY; PROVIDING THAT ANY AGENCY THAT SEEKS A NEW PUBLIC INFORMATION TELEPHONE LINE OR HOTLINE SHALL CONSULT WITH THE DEPARTMENT FOR USE OF THE 2-1-1 SYSTEM; PROVIDING FOR SERVICE PROVIDERS AND

SCOPE OF SERVICE; PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR ELIGIBLE ACTIVITIES; REQUIRING BIENNIAL REPORTS TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings — purpose. (1) The legislature finds that the implementation of a system using a single, easy-to-use telephone number, 2-1-1, for public access to information and referral for safety, health, or human services and for information about access to services after a disaster or emergency will benefit the citizens of the state of Montana by providing easier access to available services, by efficiently connecting people with the desired service providers, and by reducing duplication of efforts.

(2) The legislature finds that a statewide 2-1-1 system will facilitate public access to information and referral for safety, health, and human services and for disaster or emergency prevention or response information and will make our state's communities safer, stronger, and better-prepared to respond to threats of domestic and international terrorism and domestic emergency situations of all natures.

(3) The purposes of [sections 1 through 10] are to:

(a) establish an implementation plan for a statewide 2-1-1 system to provide public access to information and referral for disaster, emergency, safety, health, and human services;

(b) ensure that the system is free from undue political interference and conflicts of interest;

(c) provide that 2-1-1 services are delivered by qualified and competent agencies in a manner that is fair and consistent throughout the state;

(d) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests as funding allows; and

(e) ensure that funding of the statewide 2-1-1 system is provided and managed in a fiscally responsible manner.

Section 2. Statewide 2-1-1 system. The dialing code of 2-1-1 is created as the official state dialing code for public access to information and referral for safety, health, and human services and information about access to services in the event of a disaster or emergency.

Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Approved 2-1-1 service provider" means a public or nonprofit agency or organization designated by the department to provide 2-1-1 services.

(2) "Coalition" means the Montana 2-1-1 community coalition provided for in [section 4].

(3) "Department" means the department of public health and human services.

(4) "2-1-1" means the abbreviated dialing code assigned by the federal communications commission on July 21, 2000, for consumer access to community information and referral services.

(5) "2-1-1 service area" means an area of the state of Montana identified by the department as an area in which an approved 2-1-1 service provider will provide 2-1-1 services.

Section 4. Montana 2-1-1 community coalition — advisory capacity.

(1) There is a Montana 2-1-1 community coalition that will serve in an advisory capacity, as defined in 2-15-102, to the department. The coalition shall assist the department in the development of a strategic plan for implementation, operation, supervision, and evaluation of 2-1-1 calling statewide.

(2) The coalition is composed of up to 20 members appointed by the governor, including:

- (a) one representative from county government;
 - (b) one representative from local or county law enforcement;
 - (c) one representative from the Montana public service commission;
 - (d) representatives from each approved call center;
 - (e) one representative from a united way agency;
 - (f) one representative from the department;
 - (g) one representative from the department of military affairs, disaster and emergency services division;
 - (h) one representative from an organization or agency working with Indian health services;
 - (i) one representative from an organization or agency working with domestic violence and sexual assault;
 - (j) one representative from an organization or agency on aging;
 - (k) one representative from an organization or agency working in the mental health field;
 - (l) one representative from an organization or agency working with persons with disabilities;
 - (m) one representative from an organization that coordinates disaster relief delivery; and
 - (n) other representatives suggested by the department.
- (3) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.
- (4) Members shall serve staggered 3-year terms.

Section 5. New public information services — state agencies. Before a state agency that provides disaster, emergency, safety, health, or human services starts a new public information telephone line or hotline, the state agency shall consult with the department about using the statewide 2-1-1 system to provide public access to the information. If it is determined that the statewide 2-1-1 system can provide the public information at a lower cost than the establishment of a new telephone line or hotline and that the service fits within the scope of 2-1-1 service, the state agency shall provide funding to the statewide 2-1-1 system to provide the public information service. The funds must be deposited in the state special revenue account established in [section 8]. The funding amount must be determined based on the funds available, the nature of the information, and the expected call volume.

Section 6. Approved 2-1-1 service providers. (1) Only an approved service provider may provide 2-1-1 telephone services after July 1, 2006. The department, in consultation with the coalition, shall approve 2-1-1 service providers after considering the following:

- (a) the ability of the proposed 2-1-1 service provider to meet the national 2-1-1 standards recommended by the alliance of information and referral systems and adopted by the national 2-1-1 collaborative in October 2002;
- (b) the financial stability of the proposed 2-1-1 service provider;
- (c) the community support for the proposed 2-1-1 service provider;
- (d) the proposed 2-1-1 service provider's relationships with other information and referral services;
- (e) the proposed 2-1-1 service provider's record of providing existing 2-1-1 services; and
- (f) the proposed 2-1-1 service area.

(2) An existing 2-1-1 service provider may apply for the geographical area in which the service provider is currently approved to offer 2-1-1 telephone services.

Section 7. Scope of 2-1-1 service. (1) The statewide 2-1-1 system shall ensure provision of services in all counties of the state.

(2) The statewide 2-1-1 system must be administered by the department in consultation with the coalition. The department, in consultation with the coalition, shall approve a strategic plan for service delivery and divide the state into no more than 8 regions.

(3) The statewide 2-1-1 system shall ensure that all approved 2-1-1 service providers provide the following scope of service:

- (a) provide information and referral services to each inquirer for the inquirer's designated geographic area through well-trained staff or volunteers who are knowledgeable about local resources;
- (b) create and maintain a database of community resources and referrals for the service provider's designated geographic area;
- (c) provide appropriate services to crisis callers, which includes stabilization or safety assessment and connection to further resources such as crisis lines, domestic violence shelters, and rape victim advocates;
- (d) provide information to the department regarding 2-1-1 service usage including data on callers, service needs, and resource gaps;
- (e) provide support to community and disaster and emergency services providers in the case of a disaster or emergency; and
- (f) participate in any publicity plan for the statewide 2-1-1 system in Montana.

Section 8. State special revenue fund 2-1-1 account. There is a 2-1-1 account in the state special revenue fund. Money in the account may be spent only after appropriation. The 2-1-1 account must include any funding for the statewide 2-1-1 system as appropriated by the legislature or received through private contributions and other sources. Expenditures from the 2-1-1 account may be used only for the implementation and support of the statewide 2-1-1 system. Monetary savings realized by the department when converting existing resource and referral lines to the statewide 2-1-1 system must be deposited in the special revenue account.

Section 9. Eligible activities. (1) The department shall provide for the study, design, implementation, and support of a statewide 2-1-1 system. The department may contract with one or more private organizations for any or all of the study, design, implementation, or support of a statewide 2-1-1 system.

(2) The department may provide for the following activities that are eligible for assistance from the 2-1-1 account provided for in [section 8]:

(a) creating a structure for a statewide 2-1-1 resources database that will meet the standards of the alliance for information and referral systems for information and referral systems databases and that will be integrated with local resources databases maintained by approved 2-1-1 service providers;

(b) developing a statewide resources database for the statewide 2-1-1 system;

(c) maintaining public information available from state agencies and programs that provide disaster, emergency, safety, health, or human services for access by approved 2-1-1 service providers;

(d) providing grants to approved 2-1-1 service providers for the design, development, and implementation of 2-1-1 services for its 2-1-1 service area; and

(e) providing grants to approved 2-1-1 service providers to provide 2-1-1 services on a 24-hour-a-day, 7-day-a-week basis and on an on-going basis.

Section 10. Reporting. The department shall provide a biennial report to the legislative children, families, health, and human services interim committee and to the legislature as provided in 5-11-210.

Section 11. Performance of required functions. It is the intent of the legislature that the functions required in [this act] be conducted with existing employees and within existing levels of funding.

Section 12. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 10].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 549

[SB 432]

AN ACT AMENDING THE FAMILY EDUCATION SAVINGS ACT TO COMPLY WITH CERTAIN FEDERAL SECURITIES REQUIREMENTS; ESTABLISHING A FAMILY EDUCATION SAVINGS TRUST WITH PARTICIPATING TRUST ACCOUNTS GOVERNING ACCOUNTS; ESTABLISHING THE ROLE OF THE BOARD OF REGENTS AND FINANCIAL INSTITUTIONS; ESTABLISHING A TRANSITION TO THE ADMINISTRATION UNDER THE TRUST; PROVIDING FOR INDIVIDUAL TRUST ACCOUNTS WITH A FINANCIAL INSTITUTION IF THE BOARD DETERMINES THAT CERTIFICATES OF DEPOSITS AND SAVINGS ACCOUNTS ARE NOT SEPARATELY INSURED BY THE FEDERAL

DEPOSIT INSURANCE CORPORATION UNDER THE FAMILY EDUCATION TRUST; AMENDING SECTIONS 15-62-103, 15-62-201, 15-62-203, AND 20-25-902, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Family education savings trust. (1) There is a family education savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. Each participating trust account represents a trust interest in the trust and includes amounts received by the program from account owners pursuant to the participating trust agreement and interest and investment income earned by the trust account.

(2) The assets of the trust consist of investments and earnings on investments of funds received by the program as deposits to accounts and amounts transferred to the trust from accounts established prior to [the effective date of this act] pursuant to subsection (3).

(3) In accordance with the instructions of the account owner, the trustee shall invest funds deposited in each participating trust in permitted investment products as provided in this chapter. The trustee or a financial institution acting as an agent of the trustee shall pay or apply funds from each participating trust for qualified withdrawals, nonqualified withdrawals, penalties, and withholdings.

(4) (a) After [the effective date of this act] and before the mandatory transfer date specified in subsection (4)(b), each account owner must be provided with notice of the creation of the family education savings trust, the participating trust agreement, and documents describing the options and actions available to the account owner. An account owner may execute a participating trust agreement and have funds that are held by financial institutions in accounts established prior to [the effective date of this act] transferred to the trust and to a participating trust corresponding to the transferor's account. Until a voluntary transfer occurs pursuant to this subsection (4)(a) or a mandatory transfer occurs pursuant to subsection (4)(b), accounts established prior to [the effective date of this act] remain valid and are governed by this chapter as it read prior to [the effective date of this act].

(b) On December 31, 2005, or at a later date set by the board to protect account owners from possible adverse consequences, all remaining funds or investment products that are not transferred pursuant to subsection (4)(a) and that are held by financial institutions in accounts established pursuant to this chapter prior to [the effective date of this act] must be transferred to the trust. The funds or investment products must be placed in a participating trust corresponding to the account and each account owner whose account is transferred is considered to have consented to and be bound by a participating trust agreement and to the transfer of funds or investment products held in the account to a new participating trust.

Section 2. Temporary savings account program. (1) If the board offers an investment product of certificates of deposit or bank savings accounts insured by the federal deposit insurance corporation, the board may provide for the holding of those investment products by a financial institution as trust

accounts for the account owner without being part of the participating trust arrangement for the trust.

(2) Certificates of deposit and bank savings accounts not held as part of the trust are to be held as trust accounts under conditions set by the board based on, as applicable, conditions required for participating trust accounts under this chapter. The provisions of this chapter that apply to reporting, holding, management, and other administrative and tax consequences of a participating trust account of the family savings trust apply to trust accounts under this section.

(3) If trust accounts have been established under subsection (2) and the board determines that it would be in the best interest of the program for those accounts to become part of the family education savings trust, the board may merge the trust accounts established under subsection (2) into the trust. The board shall establish a transfer date. The board shall give at least 90 days' notice to owners of trust accounts established under subsection (2) of the intent to merge and a description of the options available to an account owner upon merger. Each owner of a trust account established under subsection (2) may execute a participating trust agreement and have the title to the owner's trust account that is held by a financial institution transferred to the trust and to a participating trust corresponding to an account for the account owner. On the transfer date, all accounts not transferred by account owners must be transferred by the board to the trust and placed in participating trusts corresponding to accounts and each owner whose account has been transferred is considered to have consented to and be bound by the participating trust agreement and to the transfer of the account.

Section 3. Section 15-62-103, MCA, is amended to read:

"15-62-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Account" means an individual *participating* trust account ~~or savings account~~ established under this chapter.

(2) "Account owner" means the person *who enters into a participating trust agreement and who is* designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Committee" means the family education savings program oversight committee established in 20-25-901.

(5) "Designated beneficiary" means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that is authorized to do business in this state.

(7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

(8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(9) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

(10) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

(11) *"Participating trust agreement" means an agreement between the board, as trustee and as administrator of the program, and the account owner that creates a trust interest in the trust and provides for participation in the program.*

~~(11)~~(12) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

~~(12)~~(13) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

~~(13)~~(14) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

(15) *"Trust" means the family education savings trust established by [section 1].*

(16) *"Trustee" means the board in its capacity as trustee of the trust.*

(17) *"Trust interest" means an account owner's interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary."*

Section 4. Section 15-62-201, MCA, is amended to read:

"15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties. (1) *The program must be operated through use of accounts in the trust established by account owners. Payments to the trust for participation in the program must be made by account owners pursuant to participating trust agreements. A person who wishes to deposit money into participate in the program and open an account into which funds will be deposited to pay the qualified higher education expenses of a designated beneficiary shall:*

(a) enter into a participating trust agreement pursuant to which an account will be established as a participating trust of the trust;

~~(a)~~(b) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902;

(v) *the designation of the financial institution with which the funds in the participating trust will be invested; and*

~~(vi)~~ any other information required by the board;

~~(b)(c)~~ pay the one-time application fee established by the board;

~~(c)(d)~~ make the minimum contribution required by the board or by opening an account; and

~~(d)(e)~~ designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for the board or program manager to make that determination. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty imposed under subsection (4) is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account *in violation of section 529 of the Internal Revenue Code, 26 U.S.C. 529*, and may not pledge the interest of an account or use an interest in an account as security for a loan.

~~(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution to which the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service to select new investments for the account without violating rules prohibiting investment direction.~~

~~(12)~~(11) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

~~(13)~~(12) The financial institution shall provide statements to each account owner *whose participating trusts are invested with the institution* at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of

the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.

~~(14)~~(13) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

~~(15)~~(14) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened."

Section 5. Section 15-62-203, MCA, is amended to read:

"15-62-203. Selection of financial institution as program manager — contract — termination. (1) The board shall implement the *operation of the* program through the use of one or more financial institutions to act as the program manager. Under the program, a person may *submit applications for enrollment in the program and participating trust agreements to a program manager and* establish accounts *in the trust* at the location of or through the program manager. *An account owner may deposit money in an account in the trust by paying the money to a program manager who shall accept the money as an agent for the trust.* Accounts may be invested in one or more investment products approved by the board.

(2) The committee shall solicit proposals from financial institutions to act as managers of the program. Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.

(3) On the recommendation of the committee, the board shall select as program managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

- (a) financial stability and integrity;
- (b) the safety of the investment products being offered, taking into account any insurance provided with respect to these products;
- (c) the ability of the investment products to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;
- (d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;
- (e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;
- (f) the fees, if any, proposed to be charged to persons for maintaining accounts;
- (g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and
- (h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to

cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as program managers. *The contracts must provide the terms and conditions by which financial institutions, as agents of the trust, may assist in selling interests in the trust and the manner in which funds of a participating trust that are designated for investment with or through the financial institution will be invested.*

(5) The board may select more than one financial institution to serve as program manager. The board may select more than one kind of investment product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment products must take into account:

(a) the requirements for qualifying as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201~~(12)~~(11) through ~~(14)~~ (13) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201~~(12)~~(11) through ~~(14)~~ (13) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902 and to comply with any state or federal tax reporting requirements;

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) ~~hold all accounts in trust for the benefit of this state~~ *participating trusts invested by or through the financial institution in the name of and for the benefit of the trust and the account owner;*

(g) *assist the trustee with respect to any federal or tax filing requirements relating to the program and with respect to any other obligations of the trustee.*

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) *If the board determines not to renew the appointment of a financial institution as program manager, the board may take action consistent with the interest of the program and the accounts and in accordance with its duties as trustee of the trust. If Except as provided in subsection (10), if a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:*

(a) *accounts previously established through the efforts of the financial institution may not be terminated by the trustee or board and;*

~~(b) additional contributions may be made to the those accounts in existence at the time of nonrenewal of a contract;~~

~~(c)(b) the funds in new accounts may not be placed with that established after the termination may not be invested by or through the financial institution unless a new contract is executed; and~~

~~(d)(c) except as provided in subsection (10), accounts under the supervision of participating trusts invested by or through the program manager financial institution must continue to be invested in the financial products in which they were invested prior to the nonrenewal unless the account owner selects a different investment product without violating 15-62-201(10); and~~

(d) the continuing role of the financial institution must be governed by rules or policies established by the board or a special contract and all services provided by the financial institution to accounts continue to be subject to the control of the board as trustee of the trust with responsibility for all accounts in the program.

(10) (a) *The board may terminate a contract with a financial institution or prohibit the continued investment of funds by or through a financial institution under subsection (9) at any time for good cause on the recommendation of the committee. If a contract is terminated or investment is prohibited pursuant to this subsection, the board trustee shall take custody of accounts account funds or assets held at that financial institution and shall seek to promptly transfer the accounts to reinvest the funds or assets by or through another financial institution that is selected as a program manager by the board and into the same investment products or investment products selected by the board that are as similar as possible to the original investments.*

(b) Prior to taking the actions described in subsection (10)(a), the board shall give account owners notice of the termination and a reasonable period of time, not to exceed 30 days, to voluntarily terminate the account invested by or through the financial institution or, to the extent not prohibited by 15-62-201(10), to direct that the account be invested with or through another program manager.

(c) If the termination of a program manager causes an emergency that might lead to a loss of funds to any account owner, the board or trustee may take whatever emergency action is necessary or appropriate to prevent the loss of funds invested pursuant to this chapter. After taking emergency action, the board shall provide notice and opportunity for action to account owners as provided in subsection (10)(b)."

Section 6. Section 20-25-902, MCA, is amended to read:

“20-25-902. Board — powers and duties. (1) The board shall:

(a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) select the financial institution or institutions to act as the *program manager of the program* pursuant to 15-62-203;

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the board; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section; ~~and~~

(g) adopt procedures as necessary to implement Title 15, chapter 62;

(h) *serve as trustee of the family education savings trust established in [section 1];*

(i) *enter into participating trust agreements with account owners; and*

(j) *maintain the program on behalf of the state as required by section 529 of the Internal Revenue Code, 26 U.S.C. 529.*

(2) The definitions in 15-62-103 apply to this section.”

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 62, and the provisions of Title 15, chapter 62, apply to [sections 1 and 2].

Approved April 28, 2005

CHAPTER NO. 550

[SB 442]

AN ACT REMOVING THE DEPARTMENT OF REVENUE'S AUTHORITY TO ESTABLISH A FEE TO RECOVER COSTS ASSOCIATED WITH THE POINTS REPLACEMENT SYSTEM; PROVIDING A VOIDNESS PROVISION CONTINGENT ON REPAYMENT OF THE LOAN THROUGH STATE GENERAL FUND MONEY; AMENDING SECTIONS 15-1-501 AND 17-5-2001, MCA; REPEALING SECTION 15-1-141, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

“15-1-501. Disposition of money from certain designated license and other taxes. (1) ~~Except as provided in subsection (5), the~~ *The* state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-331;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; and
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

~~(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department.”~~

Section 2. Section 17-5-2001, MCA, is amended to read:

“17-5-2001. (Temporary) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$22.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation.

(4) (a) If bonds are not issued for the project authorized in 15-1-140, the department of revenue is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$17 million, payable over a term not to exceed 7 years, for the acquisition of a replacement system for the process oriented integrated system (POINTS) computer system.

(b) The loan is payable from the department of revenue's appropriation ~~from the administrative assessment provided for in 15-1-141.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue from the administrative assessment provided for in 15-1-141 must be sufficient to repay the indebtedness with respect to the replacement system over the proposed term of the loan.~~

~~(d)~~(c) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2011—sec. 18, Ch. 597, L. 2003.)

17-5-2001. (Effective July 1, 2011) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$22.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)

17-5-2001. (Effective July 1, 2013) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation."

Section 3. Repealer. Section 15-1-141, MCA, is repealed.

Section 4. Contingent voidness. Unless a bill is passed and approved containing a specific provision that provides for full repayment of the loan for the POINTS replacement system described in 15-1-140, then [this act] is void.

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 551

[SB 477]

AN ACT REQUIRING THE DEPARTMENT OF CORRECTIONS TO ADOPT RULES ESTABLISHING A PER DIEM RATE FOR COMPENSATION THAT MUST BE PAID TO A REGIONAL CORRECTIONAL FACILITY FOR THE CONFINEMENT OF PERSONS IN THE STATE CORRECTIONAL FACILITY PORTION OF THE REGIONAL CORRECTIONAL FACILITY; AMENDING SECTION 53-30-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-507, MCA, is amended to read:

“53-30-507. Rulemaking authority. (1) The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site, the department shall consider the need for a regional correctional facility in the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation.

(2) The department shall adopt rules that include the minimum applicable standards for the construction, operation, and physical condition of a state correctional facility portion of a regional correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of a regional correctional facility. The rules must require that a privately operated or privately owned and operated state correctional facility portion of a regional correctional facility conform to applicable American correctional association and national commission on correctional health care standards.

(3) (a) *The department shall adopt rules pursuant to Title 2, chapter 4, that specify a per diem rate that must be paid to a regional correctional facility for the confinement of persons in the state correctional facility portion of the regional correctional facility.*

(b) *The rules adopted pursuant to subsection (3)(a) must include but are not limited to:*

(i) *a definition of per diem rate;*

(ii) *a method of calculating the per diem rate; and*

(iii) *the costs to be included in the per diem rate calculation.*

(c) *At a minimum, the per diem rate must include compensation for:*

(i) *direct costs, including budget expenditures directly attributable to confining inmates;*

(ii) *indirect costs, including budget expenditures that are not directly associated with the confinement of inmates but that are incurred to provide support services for the regional correctional facility;*

(iii) *capital costs, including depreciation or a pro rata portion of capital costs incurred; and*

(iv) *other costs that the department determines are necessary, including medical or transportation costs.*

(d) *The department shall determine by rule the costs that are not allowable as part of a per diem rate. Unallowable costs must include programs and services that do not have a direct benefit to persons confined in the regional correctional facility and depreciation for capital improvements paid for by the department and depreciation for equipment used in providing support services.*

(e) *A population factor must be included in the per diem rate to allow for accurate compensation based on the number of inmates confined in the regional correctional facility.*

(f) *The rules must provide for billing procedures and must allow for review of the per diem rate at least once each fiscal year. When reviewing the per diem rate, the department shall accept public comment that must be considered when the department is determining the accuracy of the per diem rate for the next fiscal year."*

Section 2. Effective date. [This act] is effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 552

[SB 486]

AN ACT REVISING THE LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT BROKERS; CLARIFYING THAT A LIFE INSURANCE PRODUCER MAY ACT AS A VIATICAL SETTLEMENT BROKER; CLARIFYING REQUIREMENTS FOR ENTERING INTO A VIATICAL SETTLEMENT CONTRACT; CLARIFYING THE COMMISSIONER OF INSURANCE'S RULEMAKING AUTHORITY WITH RESPECT TO A VIATICAL SETTLEMENT PROVIDER'S PAYMENTS TO AN INSURED THAT IS NOT TERMINALLY OR CHRONICALLY ILL; AND AMENDING SECTIONS 33-2-708, 33-20-1303, 33-20-1313, AND 33-20-1315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, \$50;

- (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (iv) insurance adjuster's license:
 - (A) application for original license, including issuance of license, if issued, \$50;
 - (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (v) insurance consultant's license:
 - (A) application for original license, including issuance of license, if issued, \$50;
 - (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (vi) *viatical settlement broker's license*:
 - (A) *application for original license, including issuance of license, if issued, \$50;*
 - (B) *biennial renewal of license, \$100;*
 - (C) *lapsed license reinstatement fee, \$200;*
 - ~~(vi)~~(vii) resident and nonresident rental car entity producer's license:
 - (A) application for original license, including issuance of license, if issued, \$100;
 - (B) quarterly filing fee, \$25;
 - (viii) *an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;*
 - ~~(vii)~~(ix) 50 cents for each page for copies of documents on file in the commissioner's office.
 - (c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.
- (2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.
- (b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).
- (3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.
- (4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

Section 2. Section 33-20-1303, MCA, is amended to read:

“33-20-1303. License application requirements. (1) A person may not act as or purport to be a viatical settlement provider ~~or viatical settlement broker~~ unless licensed as a viatical settlement provider ~~or viatical settlement broker~~ under this part.

(2) (a) *Except as provided in subsection (2)(b) and (2)(c), a person may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:*

(i) *attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and*

(ii) *pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.*

(b) *A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:*

(i) *not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.*

(ii) *regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.*

(c) *If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. A person who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.*

(d) *The provisions of subsections (2)(a) and (2)(b) do not prohibit a person licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.*

(3) *Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.*

~~(2)(4)~~ (a) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, *if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a)*, an applicant shall apply for the license ~~on forms prescribed in a form approved by the commissioner~~ and shall pay the fee required for the application.

~~(2)(b)~~ (b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

~~(4)(c)~~ (c) If an applicant is a corporation, the corporation must be:

~~(a)(i)~~ (i) incorporated or organized under the laws of this state; or

~~(b)(ii)~~ (ii) a foreign corporation authorized to transact business in this state.

~~(5)(d)~~ (d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) *An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.*

(b) *The hours of continuing education required under subsection (4)(a) must be in the subjects of life insurance, viaticals, or ethics.*

(c) *For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.*

(d) *The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203(3) must be terminated and promptly surrendered to the commissioner."*

Section 3. Section 33-20-1313, MCA, is amended to read:

"33-20-1313. Prohibitions Requirements for entering into viatical settlement contract — prohibitions on finder's fee — solicitations — discrimination — false or misleading advertising or solicitation — misuse of confidential information. (1) *A person may not enter into a viatical settlement contract within a 2-year period from the date of issuance of an insurance policy or certificate unless the person certifies to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:*

(a) (i) *the policy or certificate was issued upon the person's exercise of conversion rights arising out of a group or individual policy or certificate and the total of the time covered under the conversion policy or certificate plus the time covered by the policy or certificate prior to the conversion equal at least 24 months; and*

(ii) *the time covered under a group policy or certificate was calculated without regard to any change in insurance carriers if the coverage was continuous and under the same group sponsorship; or*

(b) the person submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:

(i) the person is terminally ill or chronically ill; or

(ii) the person has disposed of the person's ownership interest in a closely held corporation pursuant to the terms of a buyout agreement or similar agreement that was in effect at the time that the insurance policy or certificate was issued.

(2) Copies of the certification and independent evidence required under subsection (1) must be submitted by the viatical settlement provider to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

~~(1)~~(3) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection ~~(1)~~ (3) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection ~~(1)~~ (3) applies with respect to payments or offers of payment to:

(a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;

(b) any person other than a physician, attorney, or accountant described in subsection ~~(1)~~(a) (3)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or

(c) any person other than one described in subsection ~~(1)~~(a) (3)(a) or ~~(1)~~(b) (3)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.

~~(2)~~(4) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract.

~~(3)~~(5) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a licensee must be considered an insurance-support organization as defined in 33-19-104.

~~(4)~~(6) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.

~~(5)~~(7) A person licensed pursuant to 33-20-1304 may not engage in any false or misleading advertising, solicitation, or practice as described in 33-18-203.

~~(6)~~(8) A person licensed pursuant to 33-20-1304 may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner."

Section 4. Section 33-20-1315, MCA, is amended to read:

"33-20-1315. Rules — standards — bond. The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. *When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.*

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; *and*

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts; ~~and~~

(b) fees that are commensurate with fees charged pursuant to 33-2-708; ~~and~~; *and*

(c) *the continuing education program provided for in 33-20-1303(4).*

~~(4) shall require viatical settlement providers or viatical settlement brokers to pay an amount greater than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill."~~

Approved April 28, 2005

CHAPTER NO. 553

[SB 499]

AN ACT REVISING LAWS PERTAINING TO THE PUBLIC MENTAL HEALTH SYSTEM; AMENDING SERVICE AREA AUTHORITY DEFINITIONS AND DUTIES; AND AMENDING SECTIONS 53-21-1001, 53-21-1002, 53-21-1006, AND 53-21-1007, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of this part is to:

(1) create service area authorities that collaborate with the department and local advisory councils to plan, implement, and evaluate regional public mental health care within the budget constraints for each service region;

(2) promote consumer and family leadership within the public mental health system through service area authorities; and

(3) foster a consumer-driven and family-driven system of public mental health care that advances:

(a) access to a continuum of mental health services; and

(b) individual choice of services and providers.

Section 2. Section 53-21-1001, MCA, is amended to read:

“53-21-1001. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) “Department” means the department of public health and human services as provided for in 2-15-2201.

(2) “Service area authority” means an entity, as provided for in 53-21-1006, that has incorporated to contract with the department for the planning, oversight, and administration of mental health services within a service area as defined by the department by rule. (Terminates June 30, 2005—sec. 20, Ch. 602, L. 2003.)

53-21-1001. (Effective July 1, 2005) Definitions. As used in this part, the following definitions apply:

(1) “Community mental health center” means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.

(2) “Department” means the department of public health and human services as provided for in 2-15-2201.

(3) “Licensed mental health center” means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.

(4) “Service area” means a region of the state as defined by the department by rule within which mental health services are administered.

(5) “Service area authority” means an entity, as provided for in 53-21-1006, that has incorporated to ~~contract~~ *collaborate* with the department for the planning, ~~and oversight, and administration~~ of mental health services within a service area.”

Section 3. Section 53-21-1002, MCA, is amended to read:

“53-21-1002. Duties of department. The department:

(1) shall take cognizance of matters affecting the mental health of the citizens of the state;

(2) shall initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The department shall initiate and operate services in cooperation with local agencies, service area authorities, mental health professionals, and other entities providing services to persons with mental illness.

(3) shall specifically address:

(a) provider contracting;

(b) service planning;

(c) preadmission screening and discharge planning;

(d) quality management;

(e) utilization management and review;

(f) consumer and family education; and

(g) rights protection;

(4) shall collect and disseminate information relating to mental health;

(5) shall prepare and maintain a comprehensive plan to develop public mental health services in the state and to establish service areas;

(6) must receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(7) shall establish qualified provider certification standards by rule, which may include requirements for national accreditation for mental health programs that receive funds from the department;

(8) shall perform an annual review and evaluation of mental health needs and services within the state by region and evaluate the performance of programs that receive funds from the department for compliance with federal and state standards;

(9) shall coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances, *as provided in Title 52, chapter 2, part 3*, and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(10) shall coordinate the establishment of service area authorities, as provided in 53-21-1006, to ~~assist~~ *collaborate with* the department in the ~~coordination and delivery planning and oversight~~ of mental health services *in a service area.*"

Section 4. Section 53-21-1006, MCA, is amended to read:

"53-21-1006. Service area authorities — leadership committees — boards — plans. (1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for persons with mental illness, advocates, family members of persons with mental illness, mental health professionals, county commissioners, and other interested community members.

(2) The leadership committee within each service area must include but is not limited to a significant portion of consumers of services for persons with mental illness, family members of persons with mental illness, and a mental health services provider. The department shall provide assistance for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's functions and method of appointment. The bylaws must be submitted to the department for review. *The majority of the members of the board must be consumers of mental health services and family members of consumers.*

(4) The service area authority board must be established under Title 35, chapter 2. ~~Upon incorporation, the board may enter into contracts with the department to carry out the comprehensive plan for mental health for that service area.~~ Nonprofit corporations incorporated for the purposes of this part may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

(a) ~~shall define the operation and management~~ *collaborate with the department for purposes of planning and oversight of mental health services of the service area mental health system, including:*

- (i) provider contracting;
- (ii) quality and outcome management;
- (iii) service planning;
- (iv) utilization management and review;
- (v) preadmission screening and discharge planning;
- (vi) consumer advocacy and family education and rights protection;
- (vii) infrastructure;
- (viii) information ~~system~~ requirements; and
- (ix) procurement processes;

(b) *shall review and monitor crisis intervention programs established pursuant to 53-21-139;*

~~(b)~~(c) shall submit a biennial review and evaluation of mental health service needs and services within the service area;

~~(c)~~(d) shall keep all records of the board and make reports required by the department;

~~(d) shall prepare and submit a plan and budget proposal to support mental health services for children and adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area;~~

(e) *may enter into contracts with the department for purposes of planning and oversight of the service area if the department certifies that the service area authority is capable of assuming the duty;*

(e)(f) may receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of this part.

~~(f)~~(g) ~~shall~~ may reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board; and

(g)(h) shall either include a county commissioner or work closely with county commissioners in the service area.

~~(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4 year transition plan, subject to approval of the federal waivers as provided for in section 15, Chapter 602, Laws of 2003.~~

~~(7)~~(6) A service area authority may not directly provide mental health services.”

Section 5. Section 53-21-1007, MCA, is amended to read:

"53-21-1007. Mental health services contracts. (1) The department shall provide for public mental health services for the purposes of the prevention, diagnosis, and treatment of mental illness to the extent funded by the legislature.

(2) The department may administer the provision of services for prevention, diagnosis, and treatment of mental illness directly or indirectly:

~~(a) through contract with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers; or~~

~~(b) through contract with service area authorities who may contract with or develop cooperative arrangements with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers for the provision of services.~~

(3) The department is directed to encourage and create incentives for the use of funding generated by local governments to provide mental health services to participate in federal cost-sharing programs.

(4) The department shall ~~make efforts to~~ promote the rights of persons with mental illness who are eligible for services to have a choice among qualified providers of mental health services or support services that are administered or funded by the department ~~or contracted with a service area authority by the department.~~

(5) The department ~~or a service area authority~~ shall develop contracts to be bid competitively under the Montana Procurement Act for any service administered or funded by the department that will limit a client's choice of a provider of that service in order to ensure accountability and that necessary services are delivered in all areas of the state. ~~Except for the department's ability to contract solely with service area authorities, the~~ The exception for human services as provided in 18-4-123(18) does not apply."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, part 10, and the provisions of Title 53, chapter 21, part 10, apply to [section 1].

Approved April 28, 2005

CHAPTER NO. 554

[SB 524]

AN ACT DELAYING BY 1 YEAR THE REVALUATION OF ALL TAXABLE PROPERTY WITHIN CLASSES THREE, FOUR, AND TEN; AND AMENDING SECTION 15-7-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation

within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, ~~2008~~ 2009, effective for January 1, ~~2009~~ 2009, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for each year is 16.66%.”

Approved April 28, 2005

CHAPTER NO. 555

[HB 218]

AN ACT REVISING THE LAWS RELATING TO MOSQUITO CONTROL DISTRICTS; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A MOSQUITO CONTROL DISTRICT BY ADOPTING A RESOLUTION OF INTENT; REDUCING THE PERCENTAGE OF ELECTORS OR PROPERTY OWNERS REQUIRED TO SUBMIT A PETITION FOR THE CREATION OF A MOSQUITO CONTROL DISTRICT; GIVING A BOARD OF COUNTY COMMISSIONERS DISCRETION TO CREATE A MOSQUITO CONTROL DISTRICT; AMENDING SECTIONS 7-22-2403, 7-22-2408, 7-22-2409, AND 7-22-2442, MCA; REPEALING SECTIONS 7-22-2404, 7-22-2406, AND 7-22-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2403, MCA, is amended to read:

“7-22-2403. ~~Petition to create~~ Creation of mosquito control district — hearing required — notice provisions. (1) ~~When~~ Proceedings for the creation of a mosquito control district may be initiated by:

(a) a resolution of intent adopted by the county commissioners; or

(b) a petition, signed by at least ~~25%~~ 10% of the qualified electors of the proposed district or ~~25%~~ 10% of the owners of any property within the boundaries whose names appear as property owners on the last-completed assessment roll of the county in which the proposed district is situated, ~~is presented to the board of commissioners of the county asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.~~

(2) *The resolution or petition must contain the boundaries of the proposed district and, in the case of a petition, must be accompanied by sufficient funds to defray the cost of mailing, publication, and posting of the notice required in subsection (4).*

(2)(3) The commissioners by resolution shall ~~fix~~ set a time for a hearing ~~on the petition~~ at not less than 2 or more than 4 weeks from the time of the adoption

of the resolution or the presentation of the petition unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for a hearing, the commissioners may ~~cause~~ authorize a survey and study of the area sought to be included in the district to be made by competent personnel and may submit a report of the study to the department of public health and human services for its review and recommendations.

(4) (a) The commissioners shall mail a notice of the hearing provided for in this section, in the manner provided for in 7-1-2122, to each nonresident property owner and purchaser under contract for deed of taxable real and personal property within the proposed district.

(b) The commissioners shall publish the notice of the hearing, as provided in 7-1-2121, in each county in which the territory of the proposed district lies.

(c) The notice must state that any qualified elector or owner of property lying within the boundaries of the proposed district may appear before the commissioners at the time of the hearing and show cause why the district should not be created or may file a written objection to the creation of the district at any time before the date of the hearing."

Section 2. Section 7-22-2408, MCA, is amended to read:

"7-22-2408. Hearing on petition to create district. (1) At the time ~~fixed~~ set for the hearing, the commissioners shall determine whether or not the petition complies with the requirements set forth in this part and whether or not the notice has been published or posted as required.

(2) At the hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to the ~~petition and~~ creation of the district and shall also consider the written objections to the creation of the district.

(3) Except as provided in 7-22-2409, if the commissioners, ~~upon~~ after the hearing, determine there has been compliance with all of the requirements, they ~~shall may~~, by an order made and entered on their minutes, declare the district created, ~~setting and set~~ forth the name and boundaries of the district and the description of land contained within the district."

Section 3. Section 7-22-2409, MCA, is amended to read:

"7-22-2409. Adjournment of hearing. (1) The hearing may be adjourned for determination of facts, but an adjournment may not exceed a total of 2 weeks from the date originally noticed and published for the hearing.

(2) (a) If at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of public health and human services to determine if it would be advisable to exclude the geographical area from the district.

(b) ~~Upon reconvening~~ *If the commissioners create the district*, the commissioners shall define and establish the boundaries that are advisable *upon reconvening the hearing.*"

Section 4. Section 7-22-2442, MCA, is amended to read:

"7-22-2442. Hearing on petition for annexation — notice. If ~~any such a~~ petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for a hearing ~~thereon~~ and shall ~~cause~~ *give* notice

~~thereof to be given in the manner provided by 7-22-2406 and 7-22-2407 7-22-2403."~~

Section 5. Repealer. Sections 7-22-2404, 7-22-2406, and 7-22-2407, MCA, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2005

CHAPTER NO. 556

[HB 272]

AN ACT PROVIDING 50 HALF-PRICED DEER AND ANTELOPE LICENSES TO CERTAIN DISABLED COMBAT VETERANS; EXCEPTING CLASS A-3, A-4, B-7, AND B-8 AND SPECIAL ANTELOPE LICENSES ISSUED TO CERTAIN DISABLED COMBAT VETERANS FROM NUMERICAL LICENSE LIMITS; AND AMENDING SECTIONS 87-2-506, 87-2-706, AND 87-2-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-506, MCA, is amended to read:

"87-2-506. Restrictions on hunting licenses. (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for big game licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of big game licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued.

(3) *Disabled veterans who meet the qualifying criteria provided in 87-2-803(5) must be provided a total of 50 Class A-3 deer A tags, 50 Class A-4 deer B tags, 50 Class B-7 deer A tags, 50 Class B-8 deer B tags, and 50 special antelope licenses annually, which may be used within the administrative region, hunting district, or other designated area of the disabled veteran's choice, except in a region, district, or area where the number of licenses are less than the number of applicants, in which case qualifying disabled veterans are eligible for no more than 10% of the total licenses for that region, district, or area."*

Section 2. Section 87-2-706, MCA, is amended to read:

"87-2-706. Drawing for special antelope licenses. (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, *excepting*

those licenses issued pursuant to 87-2-803(5), for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) The department may promulgate rules that are necessary to implement this section.”

Section 3. Section 87-2-803, MCA, is amended to read:

“87-2-803. Persons with disabilities — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection ~~(8)~~ (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection ~~(8)~~ (9). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

~~(5)~~(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

~~(6)~~(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

~~(7)~~(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

~~(8)~~(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

~~(9)~~(10) Certification by a licensed physician under subsection ~~(8)~~ (9) must be on a form provided by the department.

~~(10)~~(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3)."

Approved May 2, 2005

CHAPTER NO. 557

[HB 367]

AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS

HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-102, MCA, is amended to read:

“3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, ~~and~~ the municipal courts, ~~and the justices’ courts of record~~ are courts of record.”

Section 2. Section 3-5-114, MCA, is amended to read:

“3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice’s ~~court established as a~~ court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court.”

Section 3. Section 3-6-204, MCA, is amended to read:

“3-6-204. Disqualification — judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice’s ~~court established as a~~ court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice’s ~~court established as a~~ court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge.”

Section 4. Section 3-10-101, MCA, is amended to read:

“3-10-101. Number and location of justices’ courts — authorization to combine with city court — justice’s ~~court established as~~ court of record. (1) There must be at least one justice’s court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice’s court.

(2) The board of county commissioners of each county of the state may establish:

- (a) one additional justice’s court located anywhere in the county; and
- (b) one additional justice’s court located in each city having a population of over 5,000, as provided in subsection (3).
- (3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice’s court in the city. A justice’s court must be established in the city if the board of county commissioners approves the request by resolution.
- (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action

and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a "*justice's court established as a court of record*" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's ~~court established as a~~ court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 5. Powers and duties of justice's court of record. (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's ~~court established as court of record~~ — record on appeal. (1) A party may appeal to district court a judgment or order from a justice's ~~court established as a~~ court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's ~~court established as a~~ court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's ~~court established as a~~ court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's ~~court established as court of record~~ — judge pro tempore. When a justice of the peace for a justice's ~~court established as a~~ court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's ~~court established as a~~ court of record, a municipal court judge, a retired justice of the peace for a justice's ~~court established as a~~ court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and

authority as the justice of the peace for the justice's court established as a court of record."

Section 8. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course — annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the course by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(2) ~~Subject to subsection (4), there~~ *There* must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(3) ~~Except as provided in subsection (4), each~~ *Each* justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in 3-10-117."~~

Section 9. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504.

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 10. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo — pleadings — conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court ~~established as a court of record~~ pursuant to 3-10-101 is on the record as provided in 3-10-115."

Section 11. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, *unless ordered by the court*. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

(h) notice of other crimes, wrongs, or acts, 46-13-109;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court ~~established as a court of record~~ is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of *timely* filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. *The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.*

(4) A defendant may appeal a justice's court, other than a justice's ~~court established as a~~ court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

Section 13. Repealer. Section 3-10-117, MCA, is repealed.

Section 14. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

Section 15. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 558

[HB 529]

AN ACT PROVIDING FOR A CHILD SUPPORT PASS-THROUGH PAYMENT AND INCOME DISREGARD FOR THOSE ON TEMPORARY ASSISTANCE FOR NEEDY FAMILIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Child support payment pass-through and income disregard. (1) For those families receiving monthly grants of temporary assistance for needy families, an amount equal to the amount of current child support collected on behalf of the family for the current month, not including arrearages, up to \$100 for each family, must be disregarded in determining the income and eligibility calculations for the grant, and that amount must be passed through to the family.

(2) The department shall use temporary assistance for needy families block grant funds received as federal special revenue for the purposes of subsection (1).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 559

[SB 276]

AN ACT REVISING THE TAXATION OF BENTONITE; EXEMPTING BENTONITE FROM NET PROCEEDS PROPERTY TAXATION BEGINNING WITH TAX YEAR 2004; IMPOSING A BENTONITE PRODUCTION TAX ON THE TONS OF BENTONITE PRODUCED BEGINNING WITH TAX YEAR 2005; EXEMPTING FROM TAXATION THE FIRST 20,000 TONS OF BENTONITE PRODUCED IN A YEAR; PROVIDING FOR A DECLINING SCHEDULE OF TAXATION OF BENTONITE DEPENDING ON THE NUMBER OF TONS PRODUCED; REQUIRING THE SEMI-ANNUAL PAYMENT OF THE TAX; PROVIDING FOR AN INFLATION ADJUSTMENT TO THE TAX SCHEDULE BEGINNING WITH TAX YEAR 2010; IMPOSING A 15% TAX RATE ON THE GROSS VALUE OF ROYALTIES; PROVIDING FOR THE DISTRIBUTION OF BENTONITE PRODUCTION TAXES; PROVIDING FOR A VALUE TO BE USED FOR COUNTY CLASSIFICATION PURPOSES AND FOR LOCAL GOVERNMENT DEBT LIMITS AND OTHER BONDING PROVISIONS; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE TAX; AMENDING SECTIONS 15-6-131, 15-6-208, 15-23-101, 15-23-501, AND 15-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Production tax rates imposed on bentonite production.

(1) The production of bentonite is taxed as provided in this section. The tax is distributed as provided in [section 10].

(2) (a) Except as provided in subsection (3), the tax on bentonite is on the gross yield of bentonite produced, measured in tons before crushing and drying, by the owner or operator within the exterior boundaries of an elementary school district. The tax is computed according to the following annual production schedule:

(i) on the first 80,000 tons produced in excess of the amount exempted in subsection (3), \$1.56 a ton;

(ii) on the next 150,000 tons produced, \$1.50 a ton;

(iii) on the next 250,000 tons produced, \$1.40 a ton;

(iv) on the next 500,000 tons produced, \$1.25 a ton;

(v) on production in excess of 1 million tons, \$1 a ton.

(b) For tax years beginning after December 31, 2009, the dollar amounts referred to in the schedule in subsections (2)(a)(i) through (2)(a)(v) must be adjusted by the department by multiplying each dollar amount by the quotient of the PCE for the first quarter of the year previous to the tax year for which the

tax is being calculated, divided by the PCE for the first quarter of the 2009 tax year.

(c) For the purposes of this section:

(i) "PCE" has the meaning provided in 15-23-515; and

(ii) "ton" means 2,000 pounds.

(3) The first 20,000 tons produced in a calendar year are exempt from taxation.

Section 2. Semiannual payment of tax — statement — authority of department. (1) (a) The bentonite production tax imposed under [section 1] and the tax on royalties under [section 3] must be paid in semiannual installments for the semiannual periods ending, respectively, June 30 and December 31 of each year, and the amount of the tax for each semiannual period must be paid to the department within 45 days after the end of each semiannual period. The owner or operator of the bentonite mine shall pay the production tax and the tax on royalty interests.

(b) Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner must be deducted from any settlements under the lease or leases or division of proceeds orders or contracts.

(2) The owner or operator shall complete on forms prescribed by the department a statement showing:

(a) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;

(b) the description and location of the mine or mines;

(c) the number of tons of bentonite extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the bentonite and the yield of the bentonite from the mine before crushing and drying, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield of value in dollars and cents.

(3) The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement.

(4) The statement must be accompanied by the tax due.

(5) The tax collected under this section must be deposited in the state special revenue fund for distribution as provided in [section 10].

(6) For the purpose of determining compliance with the provisions of [sections 1 through 11], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (a) require the attendance of a person having knowledge or information relevant to a statement;
- (b) compel the production of books, papers, records, or memoranda by the person required to attend;
- (c) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (d) take testimony on matters material to the determination; and
- (e) administer oaths or affirmations.

Section 3. Taxation of royalties. All royalty amounts paid or apportioned in kind to royalty owners for which the statement is made under [section 2] are taxed at 15% of the amount paid or apportioned in kind to the royalty owner and are paid as provided in [section 2].

Section 4. Examination of statement — adjustments — delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 2] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's statement, the excess must be paid to the department within 30 days after notice of the amount and demand for payment are mailed or delivered to the person making the statement unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the statement and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the statement.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

- (a) sent by mail to the taxpayer at the address given in the taxpayer's statement, if any, or to the taxpayer's last-known address; or
- (b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform tax review procedure provided in 15-1-211.

Section 5. Penalties and interest for violation. (1) (a) A person who fails to file a statement as required by [section 2] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the statement required by [section 2] and to pay the tax before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216(1)(d).

Section 6. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 11].

(b) If a tax imposed by [sections 1 through 11] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

Section 7. Interest on deficiency — penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the statement and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency.

Section 8. Limitations. (1) Except in the case of a person who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent statement violating the provisions of [sections 1 through 11], a deficiency may not be assessed or collected with respect to a tax period for which a statement is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the statement was filed. For purposes of this section, a statement filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period consented to.

Section 9. Credit or refund for overpayment — refund from county — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any semiannual period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to [section 10], must be withheld from the current distribution made pursuant to [section 10].

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to [section 10] and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) Except as provided in subsection (4), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the statement or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(4) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the statement is due or from the date on which the statement is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

Section 10. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under [sections 1 through 11] from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through (12).

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under [sections 1 through 11] from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection (13).

(2) For the production of bentonite occurring after December 31, 2004, and before January 1, 2006, the tax determined under subsection (1)(a) is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

(3) For the production of bentonite occurring after December 31, 2005, and before January 1, 2007, 90% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 10% must be distributed as provided in subsection (13).

(4) For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection (13).

(5) For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection (13).

(6) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must

be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (13).

(7) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (13).

(8) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection (13).

(9) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection (13).

(10) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection (13).

(11) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection (13).

(12) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (13).

(13) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through (12) are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-107, 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

(14) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

(15) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as

taxable value for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection (15)(a) must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.

Section 11. Administration — rules. The department shall:

- (1) administer and enforce the provisions of [sections 1 through 11];
- (2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 11]; and
- (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 11].

Section 12. Section 15-6-131, MCA, is amended to read:

“15-6-131. Class one property — description — taxable percentage.

(1) Class one property includes the annual net proceeds of all mines and mining claims except *bentonite*, coal, and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or, for limestone, as provided in 15-23-517 or, for industrial garnets and associated byproducts, as provided in 15-23-518.”

Section 13. Section 15-6-208, MCA, is amended to read:

“15-6-208. Mineral exemptions. (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

(3) The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation.

(4) *Bentonite extracted from a mine is exempt from property taxation.”*

Section 14. Section 15-23-101, MCA, is amended to read:

“15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

- (4) the net proceeds of mines, *except bentonite mines*;
- (5) the gross proceeds of coal mines; and
- (6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.”

Section 15. Section 15-23-501, MCA, is amended to read:

“15-23-501. Taxation of mines. (1) All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof of the mines and mining claims from the United States, ~~shall be~~ are taxed as all other land is taxed. All machinery, equipment, and other personal property used in mining and all property and surface improvements upon or appurtenant to mines and mining claims ~~which~~ that have a value separate and independent of ~~such~~ the mines or mining claims and, *except as provided in subsection (2)*, the annual net proceeds of all mines and mining claims ~~shall be~~ are taxed as other personal property. *Surface improvements upon or appurtenant to mines and mining claims that have a value separate and independent of the mines or mining claims are taxed as other improvements.*

(2) *Bentonite produced from mines and mining claims is not subject to net proceeds taxation and is taxed as provided in [sections 1 through 11].”*

Section 16. Section 15-23-502, MCA, is amended to read:

“15-23-502. Net proceeds tax — statement of yield. Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, ~~bentonite~~, or other valuable mineral, except *bentonite*, coal, and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by the person during the year preceding January 1 of the year in which the statement is made. The statement must be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515 through 15-23-518, the statement must show the following:

- (1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;
- (2) the description and location of the mine;
- (3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;
- (4) the amount and character of the ores, mineral products, or deposits and the yield of the ores, mineral products, or deposits from the mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement;
- (5) the gross yield or value in dollars and cents;

- (6) cost of extracting from the mine;
- (7) cost of transporting to place of reduction or sale;
- (8) cost of reduction or sale;
- (9) cost of marketing the product and conversion of the product into money;
- (10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;
- (11) the assessed valuation of reduction works for the calendar year for which the return is made;
- (12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;
- (13) cost of welfare and retirement fund payments provided for in wage contracts;
- (14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any services beyond the stage of reduction and beneficiation of the minerals; and
- (15) cost of mine reclamation."

Section 17. Transition. (1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004.

Section 18. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 11].

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Retroactive applicability. (1) [Sections 1 through 11] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003.

Approved April 28, 2005

CHAPTER NO. 560

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2007; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER

OF ONE-TIME FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING FOR THE FACILITATION OF PRIVATE EFFORTS TO CONSTRUCT A CHAPEL AT THE MONTANA STATE HOSPITAL AND ALLOWING THE DEPARTMENT OF ADMINISTRATION TO WAIVE REQUIREMENTS PERTAINING TO BIDDING AND BONDING FOR STATE BUILDING PROJECTS IN TITLE 18, MCA, LABOR REQUIREMENTS IN TITLE 18, MCA, AND CONTRACTOR REGISTRATION IN TITLE 39, MCA; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO WAIVE REQUIREMENTS PERTAINING TO PUBLIC BIDS AND THE DEPOSIT OF STATE LAND SALE PROCEEDS FOR THE SALE OF THE JOCKO FISH HATCHERY; REMOVING THE AUTHORITY FOR THE CONSTRUCTION OF THE LIFE SCIENCES BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING REVERSION REQUIREMENTS RELATED TO THE JOURNALISM BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING RESTRICTIONS RELATING TO THE LAW BUILDING AT THE UNIVERSITY OF MONTANA; REMOVING CERTAIN RESTRICTIONS RELATING TO THE JOURNALISM BUILDING AT THE UNIVERSITY OF MONTANA; AMENDING SECTIONS 87-1-209 AND 87-1-601, MCA, SECTION 2, CHAPTER 557, LAWS OF 1999, AND SECTION 2, CHAPTER 573, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 13], unless otherwise stated, the following definitions apply:

(1) “Capital project” means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 13].

(2) “LRBP” means the long-range building program account in the capital projects fund type.

(3) “Other funding sources” means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations and authorizations. (1) Subject to [section 9(2)], the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer either or both the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP	Other Funding Sources
MONTANA SCHOOL FOR THE DEAF AND BLIND		
Facility Improvements, Montana School for the Deaf and Blind	\$398,000	
DEPARTMENT OF ADMINISTRATION		
Roof Repair and Replacement, Statewide	3,076,242	\$206,500 Federal Special Revenue
Repair/Preserve Building Exteriors, Statewide	497,500	
Window Repairs and Replacement, Statewide	1,268,625	
Deferred Maintenance, Montana Law Enforcement Academy	761,175	
Hazardous Materials Abatement, Statewide	497,500	

Code/Deferred Maintenance Projects, Statewide	1,255,989	90,000	Federal Special Revenue
Repair Deteriorated Campus Infrastructure, Statewide	547,250		
Major Maintenance and Repairs to State Capitol	497,500		
Upgrade Fire Alarm Systems, Statewide	398,000		
Repair Elevators, Capitol Complex	796,000		
Upgrade 1100 North Last Chance Gulch	1,201,960		
DPHHS Commodity Warehouse Expansion, Helena		2,000,000	Federal Special Revenue
Public Restrooms, Virginia City and Nevada City	99,450		
Public Safety Learning Center, Montana Law Enforcement Academy		3,450,000	Federal Special Revenue
Long-range Building Program Funding Interim Project	8,000		
Capitol Annex or Alternatives Feasibility Study		500,000	Capitol Land Grant Funds
MONTANA HISTORICAL SOCIETY			
Montana Historical Society Building, Helena		30,000,000	Donations and Grants
Authority is granted to the department of administration in the indicated amount for the construction of a new historical society building.			
DEPARTMENT OF CORRECTIONS			
Improve Water System, Montana State Prison	124,375		
Improve High-Side Kitchen Ventilation, Montana State Prison	116,714		
Improve Perimeter Security, Montana State Prison	1,393,000		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance, Statewide		575,000	State Special Revenue
		575,000	Federal Special Revenue
Rose Creek Hatchery		1,700,000	State Special Revenue
Fort Peck Storage/Office Space		50,000	State Special Revenue
		150,000	Federal Special Revenue
Administrative Facilities Repair, Maintenance and Improvements		800,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Federal Spending Authority		2,100,000	Federal Special Revenue
Western Montana Veterans' Cemetery, Missoula		3,200,000	Federal Special Revenue
Montana State Veterans' Cemetery Columbarium, Fort Harrison		500,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
ADA/Code/Deferred Maintenance Projects, Montana University System	1,393,000		
Upgrade Steam Distribution System, UM-Missoula	5,905,325	3,060,000	Auxiliary Funds
Upgrade HVAC Systems, Pershing and Brockman Halls, MSU-Northern	521,380		
Heating System Improvements, Academic Center and McMullen Halls, MSU-Billings	243,775		
Mining and Geology Building Mechanical System Renovation, UM-Butte	915,400		
Upgrade Health Sciences HVAC System, Phase 2, UM-Missoula	965,150		

Renovate Domestic Water Distribution System, UM-Dillon	182,185		
Classroom/Laboratory Upgrades, Montana University System	995,000		
Facility Repairs and Improvements, MSU-Billings	542,275		
Heating Plant Phase 3, MSU-Bozeman	945,250		
Renovate HVAC Systems, Science Complex 3rd and 4th Floors, UM-Missoula	606,950		
Water/Sewer System Repairs and Maintenance, MSU-Bozeman	248,750	250,000	Auxiliary Funds
Upgrade Primary Electrical Distribution, MSU-Bozeman	746,250	750,000	Auxiliary Funds
Facility Repairs and Improvements, MSU-Agricultural Experiment Stations	477,600		
MSU-Agricultural Experiment Station Projects	646,750		
Campus Improvements, MSU-Northern	636,800	300,000	Auxiliary Funds
New Construction, Consolidate Campus, UM-Missoula College of Technology		24,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing a new university of Montana-Missoula college of technology.

Native American Study Center, UM-Missoula	2,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the Native American center. This authority augments \$3,500,000 of existing authority for this capital improvement.

New Gallery Space, UM-Missoula	6,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing new gallery space.

New Forestry Complex, UM-Missoula	20,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new forestry complex.

MBMG/Petroleum Building, UM-Tech, Butte	5,400,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the MBMG/petroleum building.

Research Lab Facility, UM-Missoula	3,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the research lab facility. Any increase in costs for the operations and maintenance of the research lab facility must be paid by the university of Montana with nonstate revenue.

Law Building ADA Improvements/ Renovation/Expansion, UM-Missoula	500,000	
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This state money augments \$5,000,000 of existing authority for this project.

School of Journalism Building, UM-Missoula	500,000	
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This state money augments \$12,000,000 of existing authority for this project.

VisComm Black Box Theater, MSU-Bozeman	2,750,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new viscomm black box theater.

Animal Bioscience Building, MSU-Bozeman	7,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new animal bioscience building. This authority augments \$5,000,000 of existing authority for this capital improvement.

Museum of the Rockies, MSU-Bozeman	12,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing improvements to the museum of the rockies.

Native American Student Center, MSU-Bozeman	8,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new Native American student center.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Facility Improvements, Montana State Hospital, Warm Springs	592,523	
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Facility Improvements, Montana Developmental Center, Boulder	218,044	
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Demolish Abandoned Buildings, Public Health and Human Services	1,741,250	
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Stabilize Old Administration Building, Montana Developmental Center, Boulder	179,100	
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Housing for High-Risk Behaviors	2,529,290	
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Special Care Unit Renovations, Eastern Montana Veterans' Home, Glendive	475,000	State Special Revenue
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Facility Renovation and Improvements, Montana Veterans' Home, Columbia Falls	465,000	State Special Revenue
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Construct Chapel, Montana State Hospital, Warm Springs	350,000	Donations and Grants
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Authority is granted to the department of administration in the indicated amount for the purpose of constructing the chapel at the Montana state hospital in Warm Springs.

DEPARTMENT OF TRANSPORTATION

Equipment Storage Buildings, Statewide	635,000	State Special Revenue
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Chiller/Cooling Towers Replacement, Helena Headquarters	350,000	State Special Revenue
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Office Addition, Billings	500,000	State Special Revenue
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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Replace Clearwater Unit Fire Cache	248,750	
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OFFICE OF THE GOVERNOR

Historic and Cultural Properties Interim Study	20,000	
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(2) (a) For the purpose of constructing a privately funded chapel at the Montana state hospital in Warm Springs, the department of administration may waive, in whole or in part, the requirements pertaining to:

- (i) bidding and bonding for state building projects in Title 18;
- (ii) labor requirements in Title 18; and
- (iii) contractor registration in Title 39.

(b) The waiver pursuant to subsection (2)(a) may be exercised in the following circumstances:

(i) to obtain the volunteer services and donated materials from members of the public, civic organizations, and other entities;

(ii) to obtain the compensated services of contractors who are donating significant amounts of labor, time, and materials; and

(iii) to meet the terms and conditions for receipt of major sums of money from private or public funding sources, including individual donations.

(3) (a) For the purpose of selling the Jocko fish hatchery to the Confederated Salish and Kootenai tribes and in exchange for constructing and improving the fish hatchery at the Rose Creek hatchery, the department of fish, wildlife, and parks may waive, in whole or in part, the requirements pertaining to:

(i) public bids for land disposal in 87-1-209(3); and

(ii) the real property trust fund in 87-1-601.

(b) The waiver pursuant to subsection (3)(a) may be exercised only under the circumstances described in subsection (3)(a). The waiver does not affect the department's requirement to obtain full market value pursuant to Article X, section 11, of the Montana constitution.

Section 3. Fund transfer. There is transferred from the general fund \$10.7 million in fiscal year 2006 and \$19.4 million in fiscal year 2007 to the long-range building program account in the capital projects fund type for the projects enumerated in [section 2].

Section 4. Capital improvements. (1) Subject to [section 18], the following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization.

Agency/Project	LRBP	Other Funding Sources
Big Springs PCB Cleanup	\$1,696,974	State Special Revenue
	2,375,000	Federal Special Revenue
Future Fisheries	1,190,000	State Special Revenue
Fishing Access Site Maintenance	350,000	State Special Revenue
Fishing Access Site Protection	800,000	State Special Revenue
Community Fishing Ponds	50,000	Federal Special Revenue
Boat Washing Stations	25,000	State Special Revenue
	75,000	Federal Special Revenue
Fish Cleaning Stations	112,500	Federal Special Revenue
	37,500	Donations and Grants
Upland Game Bird Program	1,220,000	State Special Revenue
Wildlife Habitat Maintenance	750,000	State Special Revenue
Migratory Bird Stamp Program	625,000	State Special Revenue
Motorboat Recreation Site Improvements	2,305,000	State Special Revenue
	2,000,000	Donations
Cultural and Historic Parks Improvements	2,245,000	State Special Revenue
	300,000	Donations and Grants
Grant Programs/Federal Projects	330,000	State Special Revenue
	5,000,000	Federal Special Revenue

(2) (a) Authority is granted to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
General Spending Authority, UM-All Campuses		\$4,000,000 Federal Special Revenue, Higher Education Funds, Donations, and Grants

(b) All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the university of Montana with nonstate revenue.

(3) (a) Authority is granted to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
General Spending Authority, MSU-All Campuses		\$7,000,000 Federal Special Revenue, Higher Education Funds, Donations, and Grants

(b) All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by Montana state university with nonstate revenue.

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements as indicated:

Agency/Project	LRBP	Other Funding Sources
Facility Maintenance, Repair, and Small Projects, Statewide		\$3,515,000 State Special Revenue
U.S. Highway 93 Construction Projects, Evaro to Polson		133,772,453 State Special Revenue

Section 5. Land acquisition appropriations. Subject to [section 18], the following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP	Other Funding Sources
Fishing Access Site Acquisition, Statewide		\$650,000 State Special Revenue
		100,000 Federal Special Revenue
Habitat Montana		5,430,000 State Special Revenue

Section 6. Dams. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amount for department dams:

Agency/Project	LRBP	Other Funding Sources
FWP Dams Repair		\$264,000 State Special Revenue

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

Section 7. Transfer of funds. The department of fish, wildlife, and parks and the department of transportation are authorized to transfer either or both the appropriations and authority in [sections 4 through 6] among the necessary fund types for these projects.

Section 8. Capitol land grant revenue. The appropriation of up to \$500,000 in capitol land grant revenue to the department of administration for

the capitol annex or alternatives feasibility study is the last priority for use of these funds during the 2007 biennium and is dependent upon the availability of revenue. To the extent that capitol land grant revenue is not sufficient to fund this project, the balance of the appropriation may come from reversions in the long-range building program account made during the 2006-2007 biennium. If necessary, this project may be phased in as these funds become available.

Section 9. Planning and design. (1) Subject to subsection (2), the department of administration may proceed with the planning and design of capital projects prior to the receipt of money from other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of money from other funding sources.

(2) The department may not expend funds appropriated for statewide roof repair in [section 2] or under subsection (1) of this section until after the department has entered into a contract for roof repair at the Pine Hills school in Miles City.

Section 10. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 through 6] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2007 biennium long-range building program presented to the 59th legislature.

Section 11. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 6] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 12. University buildings — operation and maintenance. (1) The 59th legislature finds that the operation and maintenance of portions of new building space that supports academic missions of the university system should be funded with current unrestricted university funds. The funding of current unrestricted university funds is shared between state general fund, tuition, and other minor sources.

(2) The office of budget and program planning, the architecture and engineering division of the department of administration, the legislative fiscal division, and the Montana university system are directed to come to an agreement and to recommend to the 60th legislature the portions of new building space that support academic missions of the university system and funding allocations between the general fund and tuition. If the legislative audit

division conducts a performance audit of the university system building program, then the office of budget and program planning, the architecture and engineering division of the department of administration, the legislative fiscal division, and the Montana university system shall take the results of the audit into consideration in making a recommendation.

(3) If the university system chooses to build nonacademic buildings, the operation and maintenance costs for the buildings must be funded from nonstate and nontuition sources.

Section 13. Legislative consent. The appropriations authorized in [sections 1 through 6] constitute legislative consent for the capital projects contained in [sections 1 through 6] within the meaning of 18-2-102.

Section 14. Section 87-1-209, MCA, is amended to read:

“87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
 - (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
 - (c) for public hunting, fishing, or trapping areas;
 - (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
 - (e) for state parks and outdoor recreation;
 - (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.
- (2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) ~~The Subject to [section 2(3)],~~ the department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) *of this section*, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) ~~Notice~~ *Subject to [section 2(3)],* notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in

a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 15. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) ~~Money~~ *Except as provided in [section 2(3)], money* must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) At the end of each fiscal year, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department."

Section 16. Section 2, Chapter 557, Laws of 1999, is amended to read:

"Section 2. Capital projects appropriations. (1) Except as provided in subsection (4)(c), the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Health and Safety Projects, Statewide	\$730,000	\$250,000	Auxiliary
Hazardous Material Remediation, Statewide	300,000		
Roof Replacements or Repairs, Statewide	521,000		
Facility Assessments, Statewide	100,000	50,000	State Special Revenue
		100,000	Federal Special Revenue
		50,000	Auxiliary
Capital Renovation		1,000,000	Capitol Land Grant Revenue
Renovate Haynes Gallery Area, Historical Society		1,000,000	Donations
DEPARTMENT OF CORRECTIONS			
Expand Women's Prison, MWP		6,475,000	Federal Special Revenue
Missoula Regional Correctional Facility Supplemental		526,497	Federal Special Revenue
Construct Reception Unit, MSP		5,500,000	Federal Special Revenue
		170,000	General Fund
DEPARTMENT OF FISH, WILDLIFE AND PARKS			
Bluewater Hatchery Renovations		200,000	State Special Revenue
Construct Fort Peck Fish Hatchery		14,640,000	Federal Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Armory, Kalispell		3,900,000	Federal Special Revenue
Construct New Armory, Bozeman		4,600,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Sprinkle Library, UM-Missoula	657,000		
Ventilate and Update Fine Arts Building, UM-Missoula	450,000		
Boiler Upgrade and Ventilation, UM-Tech	530,000	120,000	Auxiliary
Maintain HVAC Systems, MSU-Billings and COT-Billings	500,000		
Replace Steam Distribution Piping, UM-Dillon	800,000	400,000	Auxiliary
Upgrade Boiler Controls, UM-Missoula	125,000	100,000	Auxiliary

Roof Replacements or Repairs, University System	1,591,000	
Maintain Main Hall Exterior, UM-Dillon	225,000	
Renovate Cowan Hall, MSU-Northern	511,000	
Addition to Paxson Gallery, UM-Missoula	2,500,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
Applied Technology Center Feasibility Study, MSU-Northern	50,000	
Construct Nondenominational Chapel, UM-Tech	1,500,000	Donations
Forestry/Journalism Addition, UM-Missoula	10,000,000	Federal, Donations, Grants, Plant Funds
Native American Study Center, UM-Missoula	3,500,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
~~Life Sciences Building, UM-Missoula~~	~~23,000,000~~	~~Federal, State, Donations, Grants, Plant Funds~~
Rural Technology Education Center, UM-Dillon	350,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Lincoln Unit Office/Quarters and Clearwater Egress	125,000	
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES		
Sprinkle MMHNCC, Lewistown	300,000	
Construct Special Care Unit, Montana Veterans' Home	1,179,374	State Special Revenue
Improve Eastern Montana Veterans' Home	290,250	State Special Revenue
Improve Montana Veterans' Home	187,530	State Special Revenue
DEPARTMENT OF TRANSPORTATION		
Construct Equipment Storage Buildings and Roof Replacement at Helena Headquarters, Statewide	2,100,000	Highways State Special Revenue
Construct Core Drilling Building, Helena	1,000,000	Highways State Special Revenue

(2) In the event one or both of the national guard armories located in Bozeman and Whitefish, Montana, and approved in House Bill No. 14 for replacement are sold prior to construction of the new Bozeman and Kalispell armories, the proceeds of the sale that were deposited to the general fund are appropriated for replacement construction up to a maximum of \$4,000,000 and the bond authority in House Bill No. 14 is reduced by a like amount.

(3) The department of public health and human services is seeking federal funds for use in the construction of the special care unit, Montana veterans' home. If federal funds become available for this purpose, the department shall reimburse funds from the state special revenue account used to build the new unit. The total amount approved for the project from all sources is \$1,179,374.

(4) (a) The 56th legislature authorizes four department of corrections' capital construction projects in the 2001 biennium. Funding for the projects is contained in House Bill No. 14 and subsection (1) of this section. The total project cost and the authorized funding for each project are as follows:

(i) \$9,375,000 for the women's prison expansion in Billings, funded by \$2,900,000 of general obligation bond proceeds authorized in House Bill No. 14 and by \$6,475,000 of federal funds appropriated in subsection (1) of this section;

(ii) \$2,225,000 for completing the Pine Hills youth correctional facility in Miles City, funded from general obligation bond proceeds authorized in House Bill No. 14;

(iii) \$5,670,000 to construct a reception unit at Montana state prison in Deer Lodge, funded by \$170,000 of general fund money and by \$5,500,000 of federal funds appropriated in subsection (1) of this section; and

(iv) \$3,000,000 for security improvements and expanding the Wallace building at Montana state prison in Deer Lodge, funded from general obligation bond proceeds authorized in House Bill No. 14.

(b) The 56th legislature notes that approximately \$8,714,600 of federal department of justice funds are anticipated to become available for capital construction projects for the department of corrections in the 2001 biennium. It is the intent of the 56th legislature that the federal funds be used to the maximum extent possible. It is further the intent of the 56th legislature that the priority for using these federal funds is:

(i) up to \$6,475,000 for the women's prison expansion project, line-itemed in subsection (1);

(ii) up to \$526,497 for the Missoula regional correctional facility supplemental; and

(iii) up to \$5,500,000 for the construction of the reception unit at Montana state prison, line-itemed in subsection (1).

(c) (i) It is the intent of the legislature that the department of corrections may not accept federal funds for capital construction unless all conditions necessary to receive the federal dollars have been irrevocably met in advance of the expenditure of the federal funds.

(ii) It is further the intent of the legislature that federal spending authority for a capital construction project may be used only for the project identified in the law authorizing the project and may not be used for any other project.

(5) The appropriation for the Fort Peck fish hatchery in subsection (1) is contingent upon passage and approval of House Bill No. 20.

(6) The 56th legislature authorizes the construction of the rural technology education center at western Montana college of the university of Montana at a total project cost of \$4,520,000. Subsection (1) of this section contains \$350,000 in other revenue authority for this project, and House Bill No. 14 contains \$4,170,000 in general obligation bond authority for this project. In the event that other additional funds become available for this project during its construction, the general obligation bond authority in House Bill No. 14 must be reduced by a like amount and other revenue authority is increased by a like amount in subsection (1) of this section for the same purpose."

Section 17. Section 2, Chapter 573, Laws of 2001, is amended to read:

"Section 2. Capital projects appropriations. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Life Safety Projects, Statewide	\$400,000	\$	
Hazardous Material Mitigation Fund	350,000		
Roof Replacements or Repairs, Statewide	499,000		
Project Litigation Fund	475,000		
Capitol Complex Land Acquisition		400,000	Capitol Land Grant Revenue
DEPARTMENT OF CORRECTIONS			
Construction of Central Reception Unit		1,000,000	Federal Special Revenue
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Administrative Facility Repair and Maintenance		764,000	State Special Revenue
DEPARTMENT OF JUSTICE			
Upgrade Foundations and Boiler, MLEA	200,000		
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Dillon Armory		3,800,000	Federal Special Revenue
Construct New Kalispell Armory		3,700,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
Replace Primary Power Distribution System, UM-Dillon	162,750	59,375	Auxiliary
Roof Replacements or Repairs, University System	426,000		
Heating Plant Steam Distribution, Phase II, UM-Tech	438,750	236,250	Auxiliary
Chemistry Building Addition, UM-Missoula		3,200,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
All operating and maintenance expenses of the chemistry building addition are to be paid by the university of Montana-Missoula. Appropriation authority in excess of funds pledged for this project as of June 30, 2003, must be reverted.			
Master Plan Campuses, University System	100,000	150,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
This project will focus on maximizing use of existing buildings on the campuses.			
Animal and Range Science Facility, MSU-Bozeman		5,000,000	Higher Education Funds, Federal, Donations, Grants, Nonstate Funds, Plant Funds
Gaines Hall Renovation/Addition Project Design, MSU-Bozeman		2,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Agricultural Experiment Station, MSU-Bozeman		1,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Develop Classroom/Lab Design, MSU-COT, Billings	50,000		
Multi Media Center, Yellow Bay, UM-Missoula		1,350,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
All construction, operation, and maintenance expenses of the Yellow Bay multi media center are to be paid by the center.			
Law Building Renovation/Expansion, UM-Missoula		5,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

~~All operating and maintenance expenses of the law building addition are to be paid by the university of Montana-Missoula.~~

School of Journalism Building, UM-Missoula	12,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
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~~Appropriation authority in excess of funds pledged for this project as of June 30, 2005, must be reverted. All operating and maintenance expenses of the school of journalism building are to be paid by the university of Montana-Missoula.~~

Construct Applied Technology Center, MSU-Northern	3,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
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Install PBS Digital Conversion, MSU-Bozeman	3,059,455	Federal, Donations, Grants, Nonstate Funds, Plant Funds
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The university system and the information services division of the department of administration will work together to develop network plans or procedures that provide for the highest degree of bandwidth and cost-sharing capability between the university system and the department that is within technical specifications agreed to by the parties and is mutually beneficial to them. This obligation to cooperate and coordinate for the purpose of seeking mutually beneficial network arrangements applies to the intercity transport services acquired by the university system or the department of administration to meet the needs of the public broadcast system, including the utilization and sharing of excess capacity bandwidth to help meet the telecommunication needs of all state agencies in a manner that is both cost-effective and compatible with the efficient operation of the public broadcast system.

Develop Design to Expand COT, UM-COT, Helena	125,000	
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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Expand Unit Office, Libby	94,000	
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DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Licensure Compliance, MMHNCC	524,000	
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Montana Veterans' Home Improvements, Columbia Falls	165,875	State Special Revenue
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Eastern Montana Veterans' Home Improvements, Glendive	177,800	State Special Revenue
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The legislature consents to the construction of the good shepherd chapel at the Montana developmental center in Boulder with donated funds. The construction of the chapel is exempt from provisions of Title 18.

STATE BOARD OF EDUCATION

Facility Improvements, Montana School for the Deaf and Blind	315,160	
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DEPARTMENT OF TRANSPORTATION

Construct Equipment Storage Buildings, Statewide	2,700,000	Highways State Special Revenue
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(2) The Montana state university agricultural experiment station shall use these funds to construct and repair various experiment station buildings at the following locations: \$1,250,000 for Huntley, \$180,000 for Moccasin, \$200,000 for Havre, \$210,000 for Sidney, and \$160,000 for Kalispell. The amount of \$1 million for these projects will be funded from non-LRBP sources, and the amount of \$1 million will be funded from CPF in House Bill No. 14.

(3) For purposes of obtaining cash for the construction litigation appropriation authority in subsection (1), the architecture and engineering division of the department of administration may transfer any excess LRBP money from an agency as long as the transfer does not move funds required to complete any authorized agency project.

(4) The following projects are appropriated from the LRBP funding to the department of administration, in addition to the projects listed in subsection (1), by the decrease in bond debt service paid from the LRBP in House Bill No. 14:

Agency/Project	LRBP	Other Funding Sources
DEPARTMENT OF ADMINISTRATION		
Life Safety Projects, Statewide	\$300,000	
Hazardous Material Mitigation, Statewide	90,000	
Roof Replacements or Repairs, Statewide	150,000	
MONTANA UNIVERSITIES AND COLLEGES		
Code Compliance/Deferred		
Maintenance, All Campuses	550,000	
Develop Design to Expand COT,		
UM-COT, Helena	240,000"	

Section 18. Coordination instruction. If House Bill No. 79 is not passed and approved, then:

(1) the state special revenue appropriation for the wildlife habitat maintenance project in [section 4] is reduced to \$487,500; and

(2) the state special revenue appropriation for habitat Montana in [section 5] is reduced to \$2,747,500.

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2005

CHAPTER NO. 561

[SB 107]

AN ACT CLARIFYING WHEN SPECIFIC GROUND WATER MANAGEMENT PLANS MUST OR MAY BE DEVELOPED AND IMPLEMENTED; ALLOWING THE DEPARTMENT OF AGRICULTURE TO INITIATE EDUCATIONAL PROGRAMS ABOUT AGRICULTURAL MANAGEMENT IN AN EFFORT TO PRECLUDE THE NEED FOR DEVELOPING SPECIFIC GROUND WATER MANAGEMENT PLANS IN THE FUTURE; AMENDING SECTIONS 80-15-212 AND 80-15-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-15-212, MCA, is amended to read:

"80-15-212. Specific agricultural chemical ground water management plans. (1) Except as provided in 80-15-216, the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area:

(a) when the level of an agricultural chemical found in ground water is at 50% or greater of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(2) *The department may develop and implement an agricultural chemical ground water management plan specific to particular agricultural chemicals and may consider but is not limited to considering the following elements when determining whether or not to develop and implement agricultural chemical ground water management plans:*

~~(b) when~~ (a) a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

~~(c) when~~ (b) agricultural chemicals have been determined to have migrated in the ground water from the point of detection;

~~(d) when~~ (c) EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns, and ~~when~~ EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

~~(e) when~~ (d) agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas ~~underlain~~ *underlain* by ground water that is vulnerable to impairment.

(3) *The department may initiate educational programs about agricultural chemical management to provide information and management techniques to protect ground water in an effort to preclude the need for development of specific agricultural chemical ground water management plans in the future.*

~~(2)(4) Any~~ A person using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan ~~shall~~ *shall* comply with the plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

~~(3)(5)~~ The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources."

Section 2. Section 80-15-213, MCA, is amended to read:

"80-15-213. Beneficial use to be considered in developing management plans — water classification. (1) (a) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until the ground water is classified by the department of environmental quality; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as ~~required by~~ *provided in* 80-15-212(1) and (2).

(2) The department may request the department of environmental quality to classify certain ground water and may collect the data and information required by the department of environmental quality to classify the ground water. If adequate technical data and financial resources are available as determined by the department of environmental quality, the department of

environmental quality shall classify ground water at locations as requested by the department.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2005

CHAPTER NO. 562

[SB 114]

AN ACT CLARIFYING LANGUAGE RELATING TO INSURANCE OFFENSES; AND AMENDING SECTIONS 33-2-101, 33-2-104, AND 33-18-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-101, MCA, is amended to read:

“33-2-101. ~~Certificate of authority~~ Certificate of authority required — administrative and criminal penalties. ~~(1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code. (1) Except as expressly otherwise provided in this code, a person acting as an insurer and an insurer transacting insurance in this state must have a subsisting certificate of authority issued by the commissioner.~~

~~(2) No~~ An insurer shall have or maintain that has or maintains in Montana any office, representative, or other facilities facility for the solicitation or servicing of any kind of insurance in any other state unless it is then must be authorized to transact the same kind of insurance in this state.

~~(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213 and in addition is subject to the civil penalty provided in 33-1-317.”~~

Section 2. Section 33-2-104, MCA, is amended to read:

“33-2-104. Representing or aiding unauthorized insurer prohibited. ~~(1) No~~ A person shall in this state may not directly or indirectly act as insurance producer for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

~~(2) This section shall~~ does not apply to:

(a) acceptance of service of process by the commissioner under 33-1-613; or

(b) surplus lines insurance and other transactions as to for which a certificate of authority is not required of an insurer as stated in 33-2-102.

~~(3) Any person violating this section shall upon conviction thereof be guilty of a felony.~~

~~(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213.”~~

Section 3. Section 33-18-401, MCA, is amended to read:

“33-18-401. False application, claim, and proof of loss — criminal penalty. (1) An insurance producer, examining physician, applicant, or other person who knowingly ~~or willfully~~ makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months, or both ~~such~~ fine and imprisonment at the discretion of the court.

(2) ~~An insurance producer, examining physician, applicant, or other~~ (a) A person who, for the purpose of obtaining any money or benefit, knowingly ~~or willfully~~ presents or causes to be presented a false or fraudulent claim or any proof in support of ~~such a false or fraudulent~~ claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of ~~such a false or fraudulent~~ claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him ~~theft under 45-6-301.~~ Either a county attorney or the attorney general may prosecute the person.

(b) As used in subsection (2)(a), “person” includes but is not limited to an insurance producer, examining physician, or applicant.”

Approved May 2, 2005

CHAPTER NO. 563

[SB 115]

AN ACT CREATING CLASS FOURTEEN PROPERTY TO INCLUDE WIND GENERATION FACILITIES; PROVIDING A DEFINITION OF “WIND GENERATION FACILITIES”; PROVIDING THAT A FACILITY IS NOT ELIGIBLE TO BE CLASSIFIED AS CLASS FOURTEEN PROPERTY UNLESS THE FACILITY PAID THE STANDARD PREVAILING RATE OF WAGES FOR HEAVY CONSTRUCTION DURING THE CONSTRUCTION PHASE; TAXING CLASS FOURTEEN PROPERTY AT 3 PERCENT OF ITS MARKET VALUE; ALLOWING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY THE CONSTRUCTION OF A COMMERCIAL WIND GENERATION FACILITY; ALLOWING INTERLOCAL IMPACT AGREEMENTS; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-201, 15-24-3005, 15-24-3006, AND 15-24-3007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

- (a) wind generation facilities of a centrally assessed electric power company;
- (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;
- (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137.

(2) Class fourteen property does not include wind generation facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(3) For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(4) Class fourteen property is taxed at 3% of its market value.

Section 2. Wind generation facility impact fee for local governmental units and school districts. (1) An owner or operator of a wind generation facility used for a commercial purpose is subject to an initial local governmental and local school impact fee for the first 3 years after construction of the wind generation facility begins. The impact fee may not exceed 0.50% of the total cost of constructing the wind generation facility.

(2) (a) Subject to subsection (2)(b), the impact fee is assessed and distributed as provided in 15-24-3005(2) and (3).

(b) Local governmental units may enter into an interlocal agreement as provided in 15-24-3005(4).

(3) (a) For the purposes of this section, "wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(b) The term does not include a wind generation facility used for noncommercial purposes or exclusively for agricultural purposes.

Section 3. Tax abatement for wind generation facilities. Notwithstanding the provisions of 15-24-1401, on [the effective date of Senate Bill No. 19], a new wind generation facility described in [section 1] may be granted the tax benefits under 15-24-1402 as that section applied on December 31, 2004.

Section 4. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) ~~Class~~ *Except as provided in subsection (2), class seven property* includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) *Class seven property does not include wind generation facilities classified under [section 1].*

~~(2)~~(3) Class seven property is taxed at 8% of its market value.”

Section 5. Section 15-6-141, MCA, is amended to read:

“15-6-141. Class nine property — description — taxable percentage.

(1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, *except wind generation facilities classified under [section 1],* used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), “property used for the sole purpose” does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities ~~included in class thirteen~~ *classified under 15-6-156 and wind generation facilities classified under [section 1];*

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and ~~classified in class five under 15-6-135;~~

(iii) property owned by organizations providing telephone communications to rural areas and ~~classified in class five under 15-6-135;~~

(iv) railroad transportation property included in ~~class twelve~~ *15-6-145;*

(v) airline transportation property included in ~~class twelve~~ *15-6-145;* and

(vi) telecommunications property included in ~~class thirteen~~ *15-6-156.*

(2) Class nine property is taxed at 12% of market value.”

Section 6. Section 15-6-156, MCA, is amended to read:

“15-6-156. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities, *except wind generation facilities classified under [section 1],* of a centrally assessed electric power company;

(b) electrical generation facilities, *except wind generation facilities classified under [section 1],* owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities, *except wind generation facilities classified under [section 1],* owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or *[section 1]*;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified ~~in class five under 15-6-135~~;

(f) property owned by organizations providing telecommunications services and classified ~~in class five under 15-6-135~~; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 7. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that ~~are~~ are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

~~(i) 31% for tax year 2003;~~

~~(ii) 31.4% for tax year 2004;~~

~~(iii)~~ (i) 32% for tax year 2005;

~~(iv)~~ (ii) 32.6% for tax year 2006;

~~(v)~~ (iii) 33.2% for tax year 2007;

~~(vi)~~ (iv) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

- ~~(i) 13% for tax year 2003;~~
- ~~(ii) 13.3% for tax year 2004;~~
- ~~(iii)(i) 13.8% for tax year 2005;~~
- ~~(iv)(ii) 14.2% for tax year 2006;~~
- ~~(v)(iii) 14.6% for tax year 2007;~~
- ~~(vi)(iv) 15% for tax year 2008 and succeeding tax years;~~

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

- (i) the acquired cost of the personal property is less than \$15,000;
- (ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
- (iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in 61-1-139; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, and [section 1], if the tax rate in 15-6-138 reaches zero:

- (i) all agricultural implements and equipment;
- (ii) all mining machinery, fixtures, equipment, tools, and supplies;
- (iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;
- (iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;
- (v) all goods and equipment that are intended for rent or lease;
- (vi) special mobile equipment as defined in 61-1-104;
- (vii) furniture, fixtures, and equipment;
- (viii) x-ray and medical and dental equipment;
- (ix) citizens' band radios and mobile telephones;
- (x) radio and television broadcasting and transmitting equipment;
- (xi) cable television systems;
- (xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e):

(i) the term “institutions of purely public charity” includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) “industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) “industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.”

Section 8. Section 15-24-3005, MCA, is amended to read:

“15-24-3005. Electrical generation facility impact fee for local governmental units and school districts — *wind generation facility impact fee.* (1) (a) If an owner or operator of an electrical generation facility, as defined in 15-24-3001, is exempt from property taxation pursuant to 15-24-3001, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in 15-24-3001.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility *or wind generation facility* is located is the local governmental unit that is authorized to assess the impact fee pursuant to *[section 2(1)] or subsection (1) of this section.*

(3) The impact fee must be distributed to the local governmental unit for local impacts and the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the *electrical generation facility or wind generation facility* is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to the percentage allocation required in subsection (3). The county in which the electrical generation facility *or wind generation facility* is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of *[section 2]* and this section, a “local governmental unit” means a county, city, or town. If an exempt electrical generation facility *or wind generation facility* is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility *or wind generation facility* is not located within the district.

(6) Impact fees imposed under *[section 2(2)(b)] or under subsection (4) of this section* must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.”

Section 9. Section 15-24-3006, MCA, is amended to read:

“15-24-3006. Electrical energy generation impact fee reserve account. (1) The governing body of a county receiving impact fees under 15-24-3005(4) or [section 2(2)(b)] shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose of an interlocal agreement provided for in 15-24-3005 or [section 2]. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account.”

Section 10. Section 15-24-3007, MCA, is amended to read:

“15-24-3007. Electrical generation impact fund. (1) A local governmental unit, as defined in 15-24-3005, and a school district that receives impact fees pursuant to 15-24-3005(2), ~~or~~ 15-24-3006, or [section 2(2)(a)] shall establish an electrical generation impact fund for the deposit of the fees. A local governmental unit or school district may retain the money in the fund for any time period considered appropriate by the governing body of the local governmental unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund by a city, town, or county under the provisions of Title 7, chapter 6, part 40, or by a school district under the provisions of Title 20, chapter 9, part 5.”

Section 11. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 24, part 30, and the provisions of Title 15, chapter 24, part 30, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 15, chapter 24, part 14, and the provisions of Title 15, chapter 24, part 14, apply to [section 3].

Section 12. Coordination instruction. If Senate Bill No. 19 is not passed and approved, [section 3 of this act] is void.

Section 13. Coordination instruction. If Senate Bill No. 48 is not passed and approved or if Senate Bill No. 48 is passed and approved but it does not contain a section that amends 15-6-138 to eliminate the provision for a phased-in reduction of the tax rate on class eight property to zero contingent on a certain increase in state wages and salaries and if Senate Bill No. 68 and [this act] are passed and approved, then [section 6] of Senate Bill No. 68 must read as follows:

“NEW SECTION. Section 6. Personal and other property exemptions. The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (a) construct, repair, and maintain improvements to real property; or
 - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
 - (a) the acquired cost of the personal property is less than \$15,000;
 - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
 - (c) the lease of the personal property is generally on an hourly, daily, or weekly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;
- (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; and
- (8) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, 15-6-156, and [section 1 of Senate Bill No. 115] if the tax rate in 15-6-138 reaches zero:
 - (a) all agricultural implements and equipment;
 - (b) all mining machinery, fixtures, equipment, tools, and supplies;
 - (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;
 - (d) all manufacturing machinery, fixtures, equipment, tools, and supplies;
 - (e) all goods and equipment that are intended for rent or lease;
 - (f) special mobile equipment as defined in 61-1-104;
 - (g) furniture, fixtures, and equipment;

- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers; and
- (m) theater projectors and sound equipment."

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Retroactive applicability. (1) Except as provided in subsection (2), [this act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

(2) [Sections 2, 3, and 8 through 10] apply retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

Approved May 2, 2005

CHAPTER NO. 564

[SB 139]

AN ACT ELIMINATING THE REQUIREMENT TO REGISTER A MONTANA DISTRICT COURT ORDER WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PRIOR TO COMMENCING THE ADMINISTRATIVE MODIFICATION PROCESS; CLARIFYING THE CRITERIA FOR REVIEW IN THE ABSENCE OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES; CLARIFYING THE REMEDY IF A PARTY REFUSES TO PRODUCE THE REQUESTED FINANCIAL INFORMATION; ELIMINATING A MANDATORY MEDIATION SESSION AND CERTAIN SERVICE OF PROCESS REQUIREMENTS; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-234, 40-5-248, 40-5-271, 40-5-272, 40-5-273, 40-5-277, AND 40-6-116, MCA; REPEALING SECTION 40-5-276, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the parents;
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and the child's educational and medical needs;
- (e) the age of the child;
- (f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of *Title 40*, chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or

biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271 through 40-5-273, ~~and 40-5-276 through 40-5-277, and 40-5-278.~~

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 2. Section 40-5-226, MCA, is amended to read:

“40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.

(1) The administrative hearing is defined as a “contested case”.

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party’s case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child’s birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties’ separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child

support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, ~~and 40-5-276 through 40-5-277~~, and 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, ~~and 40-5-276 through 40-5-277~~, and 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and
- (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or a IV-D agency of another state under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 3. Section 40-5-234, MCA, is amended to read:

“40-5-234. Paternity blood tests — use of expert’s affidavit — effect of test results — records — presumption. (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish the chain of custody.

(3) If the scientific evidence resulting from a paternity blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity must be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

(4) The department may enter an order of nonpaternity based on a blood test exclusion and may order the department of public health and human services to prepare an amended or substitute birth certificate.

(5) The department may enter in the support order registry established in ~~40-5-271~~ 40-5-906 a written finding of any paternity presumption created by paternity blood test results.

(6) A presumption of paternity established under this section is a sufficient basis for establishing a support order.”

Section 4. Section 40-5-248, MCA, is amended to read:

“40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to the department or to an obligee, or both; or

(b) upon registration under ~~40-5-271~~ 40-5-906 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under ~~40-5-271~~ 40-5-906;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as described in 30-9A-301.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until the applicable statute of limitations expires, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or for temporary assistance for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by ~~40-5-271~~ 40-5-906.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of title is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9A-301. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

Section 5. Section 40-5-271, MCA, is amended to read:

"40-5-271. Registration of support orders. (1) The department may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by ~~a district court of this state or by~~ a court or administrative agency of another state. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.

(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. *The notice may be included in*

the notice issued under 40-5-273. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

- (a) did not have jurisdiction to enter the order;
- (b) did not have personal jurisdiction over the party; or
- (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

- (i) of the amount of any alleged arrearage as of the date of the notice;
- (ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);
- (iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and
- (iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;
- (ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;
- (iii) the order was obtained by fraud;
- (iv) the issuing court or agency has stayed enforcement of the order pending appeal;
- (v) the order has been vacated, suspended, or modified by a later order;
- (vi) there is a defense under the law of this state to the remedy sought; or
- (vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

Section 6. Section 40-5-272, MCA, is amended to read:

"40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a support order ~~filed with the support order registry~~ *issued by a district court of this state or by a court or administrative agency of another state or a previously issued administrative support order of this state* may be reviewed by the department to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273, ~~and 40-5-276 through 40-5-277, and 40-5-278~~ is authorized when:

- (a) the obligor and the obligee reside in this state; or
- (b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) a substantial change in circumstances as defined by administrative rules;

(b) *the need to provide for the child's health care needs, regardless of the availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance; or*

(c) a lapse of 36 months from the date that:

(i) the order was entered ~~or last reviewed;~~

(ii) *an administrative hearing was granted under 40-5-277; or*

(iii) *an administrative order was issued denying a modification because of the applicant's failure to meet one of the criteria described in this subsection (4); or*

(d) *a change in custody of the child.*

(5) *A party may withdraw the party's request for modification prior to the issuance of the notice described in 40-5-273. After the issuance of the notice, if a party withdraws a request for modification, the nonrequesting party may continue the modification action by filing with the department a written request to continue.*

~~(5)~~(6) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(6)(7) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and 40-5-150 apply to this section.”

Section 7. Section 40-5-273, MCA, is amended to read:

“40-5-273. Administrative Notice of review of child support orders — order for production of information. (1) Upon receipt of a review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272, a notice ~~that an~~ of administrative review ~~will be conducted~~ and an order for the production of financial information, *if appropriate*, must be served either personally or by certified mail on the obligor, the obligee, and any other party entitled to notice. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed requests a hearing or appears at the administrative review *hearing*. The notice must include ~~the following information as an exception to 2-4-601 a statement:~~

(a) ~~a statement~~ of the purpose, objectives, and possible consequences of the review, including that a modified support order may require the obligee to pay a monthly transfer payment to another party;

(b) ~~a statement~~ of the right of the obligor and the obligee to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; ~~and~~

(c) ~~a requirement that the obligor and the obligee provide the department with telephone numbers at which they and their witnesses may be contacted for the review of the dollar amount of the support obligation to be paid each month for the child;~~

(d) *of any change in the child’s medical support needs, including changes to the original order to bring it into compliance with part 8 of this chapter;*

(e) *of the effective date of the change in the child support or medical support obligation;*

(f) *of the right of any party to request a hearing to contest the amount of child support alleged in the notice or to contest the imposition or modification of a medical support order;*

(g) *that if a party does not timely file a request for a hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;*

(h) *that if a party requests a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;*

(i) *that a party’s refusal to participate is a consent to entry of a child support and medical support order consistent with the department’s determination; and*

(j) *that the parties are entitled to a fair hearing under 40-5-277.*

(2) An order for the production of financial information may be incorporated into the review notice and must ~~state~~ include a statement that:

(a) the financial information must be returned no later than the 20th day after the date the order is served;

(b) if the requested information is not returned as required, the department may:

(i) proceed with the review using the information available to the department;

(ii) cease all proceedings for the review; ~~or~~

(iii) initiate contempt proceedings in accordance with 40-5-226; ~~and or~~

(iv) *apply to the district court for an order to compel compliance with the order for production of financial information in accordance with 2-4-104; and*

(c) any information required by the order must be provided to the department and other parties prior to the review ~~session~~ hearing.

(3) If, in the absence of a certified mail return receipt showing the date of service, a person requests a hearing ~~or appears at an administrative review~~, any financial information ordered produced pursuant to subsection (2) must be provided to the department no later than the 20th day after the person requests the hearing ~~or appears at the administrative review~~, unless the person requesting the hearing ~~or attending the administrative review~~ waives that date in writing. A person who waives that date in writing shall provide the financial information by the date provided in subsection (2) or by another date established by order of the department.

(4) If additional discovery is requested by a party, the hearings officer may issue subpoenas ordering other parties to produce information in the party's possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines."

Section 8. Section 40-5-277, MCA, is amended to read:

"40-5-277. Administrative review hearing after review — final order — court approval of order. (1) Upon receipt of a timely request for hearing from a party ~~to a review session~~, the department shall schedule an administrative hearing. The hearing is a contested case as defined in 2-4-102 and must initially be conducted by teleconferencing methods. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall grant a de novo in-person hearing. The hearing is subject to Title 2, chapter 4, and 40-5-253, except as otherwise provided in 40-5-272, 40-5-273, ~~and 40-5-276 through 40-5-277, and 40-5-278.~~

~~(2) The administrative hearing following a review session is limited to resolution of contested facts identified by the parties or the department during the review session.~~

~~(3) If additional discovery is requested by a party, the hearings officer may issue subpoenas ordering the department to produce unprotected information and ordering other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines.~~

~~(4)(2)~~ In addition to the powers and duties provided by other law, to ensure the equitable determination of a support obligation, during a review hearing the department shall:

(a) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts in dispute;

(b) hear evidence submitted by the parties and rule on its admissibility; and

(c) apply the guidelines to the facts agreed upon and to those determined at the hearing on disputed matters.

~~(5) On the basis of evidence presented on the contested facts at the administrative hearing and the agreed facts determined in the review session, the department may:~~

~~(a) adopt its own recommendation;~~

~~(b) determine a support obligation in accordance with the guidelines and issue a modifying order; or~~

~~(c) terminate the review.~~

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice. The monthly support obligation must be determined with reference to the child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income and financial condition, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable award unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application is unjust or inappropriate. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

~~(6)~~(4) If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modified support order may not change the amount of the support obligation. Regardless of the amount of the support order, the department may determine that an order for the provision of health insurance is appropriate.

~~(7)~~(5) The department shall consider whether or not health insurance for the child is available and make an appropriate order in accordance with part 8 of this chapter for the provision of the child's health insurance.

~~(8)~~(6) In addition to complying with other requirements of law, the modified support order must include the following notices and warnings:

(a) that the parties keep the department informed of the name and address of the obligor's current employer and information on health insurance available to the parties through employment or other group insurance; and

(b) that the modified order is subject to future administrative review and modification by the department upon the request of the department or a party

under ~~40-5-271 through 40-5-273 and 40-5-276 through 40-5-278~~ *this part* when the department is providing services under Title IV-D of the Social Security Act.

(9)(7) Except as provided in subsection ~~(10) (8)~~, an order entered under this section:

(a) is a final agency decision and is subject to judicial review pursuant to the Montana Administrative Procedure Act; and

(b) must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7, and 40-5-253.

~~(10)(8) (a) An administrative modified support order issued under 40-5-276 or this section that modifies a support order entered by a Montana court or a court of another jurisdiction or a court of another jurisdiction is not effective as a final order until the modified order is filed with and approved by the court that entered the order, if that order was entered by a Montana district court. If the order was entered by a court of another jurisdiction, the order must be filed with and approved by a Montana district court that is an appropriate court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings, if that order was entered by a Montana district court. If the order was entered by a court of another jurisdiction, the order must be filed with and approved by a Montana district court that is an appropriate court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings. The department shall file the proposed modified order with the appropriate court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings and shall serve the order on the parties and their counsel of record in the administrative and court proceedings personally or by certified mail, return receipt requested by mail or personal service in accordance with Rule 5 of the Montana Rules of Civil Procedure. Service is complete upon signing of the return receipt mailing to the last-known address of the parties and counsel of record.~~

(b) A party may file a written objection to an administrative modified support order proposed by the department under this section with the court within 20 days after service of a copy of the order on the party. The court shall set a date for a hearing on the objection to the proposed order. If an objection is not filed, the court may without further notice enter its order.

(c) The court may adopt an administrative modified support order proposed under ~~40-5-276~~ or this section, modify it, reject it, or remand it to the department with instructions for further hearing. Service of the court order must be in accordance with Rule 5 of the Montana Rules of Civil Procedure. If the court modifies a proposed administrative modified support order proposed under ~~40-5-276~~ or this section without a hearing, a party may file an objection to the court's modification within 10 days of service of the court's order on the party. If an objection is filed, the court shall set a date for hearing the objection and shall enter its final order after the hearing."

Section 9. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

- (a) the needs of the child, including medical needs;
- (b) the standard of living and circumstances of the parents;
- (c) the relative financial means of the parents;
- (d) the earning ability of the parents;
- (e) the need and capacity of the child for education, including higher education;
- (f) the age of the child;
- (g) the financial resources and the earning ability of the child;
- (h) the responsibility of the parents for the support of others;
- (i) the value of services contributed by the custodial parent;
- (j) the cost of day care for the child; and
- (k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of *Title 40*, chapter 5, part 9.

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(c) If an obligor is excepted from paying support through income withholding, the support order must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(9) (a) If the district court establishes paternity or establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of the party's employer; and
- (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(10) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided by 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted, by the department as provided for in 40-5-271 through 40-5-273, ~~and 40-5-276 through 40-5-277, and 40-5-278.~~

[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 10. Repealer. Section 40-5-276, MCA, is repealed.

Section 11. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 565

[SB 154]

AN ACT REVISING THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM; PROVIDING FOR A LIMIT TO THE ADMINISTRATIVE COSTS AND RESERVES OF ANY ENTITY UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADMINISTER THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM; CLARIFYING THAT THE DEPARTMENT MAY EITHER ADMINISTER THE PROGRAM DIRECTLY OR CONTRACT FOR ADMINISTRATION OF THE PROGRAM WITH AN INSURANCE COMPANY OR OTHER ENTITY; PROVIDING FOR THE RETURN OF EXCESS PREMIUM HELD IN RESERVE; PROVIDING FOR AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO DEPOSIT EXCESS PREMIUM AND UNEXPENDED APPROPRIATIONS FOR THE PURPOSES OF THE PROGRAM; AMENDING SECTIONS 17-7-304 AND 53-4-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-304, MCA, is amended to read:

“17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) *or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4,*

part 10, and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) After the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning."

Section 2. Section 53-4-1007, MCA, is amended to read:

"53-4-1007. (Temporary) Department may contract for services. (1)

The department of public health and human services may *administer the program directly or* contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. ~~The department shall first offer the insurer the opportunity to negotiate a contract price prior to purchasing a health care service on a fee for service basis.~~ *In operating the program and providing health services, the department may:*

(a) *pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;*

(b) *purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;*

(c) *purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or*

(d) *pay providers on a fee-for-service basis and directly provide administrative services in a self-funded program.*

(3) (a) *If the department of public health and human services contracts with an insurance company or other entity to administer the program as provided in subsection (2)(b) or (2)(c), not more than 12% of the contract payment may be used for administrative expenses, including:*

(i) *direct and indirect expenses as specified in 33-22-1514;*

(ii) *risk charges; and*

(iii) *any applicable assessments, fees, and taxes.*

(4) *If the department operates the program by providing administrative services under subsection (2)(a), (2)(b), or (2)(d), the department's administrative expense may not exceed the lesser of 10% or the applicable federal limitation.*

(5) (a) *An insurance company or other entity that contracts with the department for a fully insured contract as provided in subsection (2)(b) shall calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract. The remainder of the surplus balance must be deposited in the state special revenue account provided for in [section 3].*

(b) *For the purposes of this subsection (5):*

(i) *"risk charge" means the percentage of the administrative expense allowed in the contract for assuming the risk;*

(ii) *"surplus account balance" means funds that remain after all claims and all administrative expenses have been paid for a claim period. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"*

Section 3. State special revenue account. (1) There is an account in the state special revenue fund to the credit of the state children's health insurance program administered by the department of public health and human services. Any interest or income derived from the account must be deposited in the account.

(2) Money deposited in this account must be used by the department to cover additional children, to expand eligibility within the limits provided in 53-4-1004, to reduce or maintain premiums, or to establish and maintain a reserve.

(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2).

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 4, part 10, and the provisions of Title 53, chapter 4, part 10, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to contracts offered, issued, or renewed after [the effective date of this act].

Section 7. Termination. [Sections 1 through 3] terminate on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

Approved May 2, 2005

CHAPTER NO. 566

[SB 167]

AN ACT AUTHORIZING THE CREATION OF TECHNOLOGY DISTRICTS; PROVIDING THAT A DISTRICT IS CREATED TO ENCOURAGE DEVELOPMENT OF TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS; ESTABLISHING THAT TENANTS OF THE DISTRICT BE PRIMARY SECTOR COMPANIES; ESTABLISHING THAT A TECHNOLOGY DISTRICT MAY USE TAX INCREMENT FINANCING AND ISSUE BONDS FROM TAX INCREMENTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4285, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4301, AND 7-15-4304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of a technology district for technology infrastructure development projects. The purpose of a technology district is for the development of infrastructure to encourage the location and retention of technology development projects in the state. The tenants of a technology district must be businesses or organizations engaged in technology-based operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the business or organization occur outside of Montana or the business or organization is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

(2) A technology district:

(a) shall consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned for use in accordance with the area growth policy, as defined in 76-1-103;

(c) may not comprise any property included within an existing urban renewal area district or industrial infrastructure development district created pursuant to this part;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements necessary for technology development;

(e) must, prior to its creation, have in place a formally adopted comprehensive development plan that ensures the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) A technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293.

Section 2. Section 7-15-4282, MCA, is amended to read:

“7-15-4282. Authorization for tax increment financing. Any urban renewal plan, as defined in 7-15-4206, ~~or~~ industrial district ordinance, adopted pursuant to 7-15-4299, *or technology district ordinance, adopted pursuant to [section 1],* may contain a provision or be amended to contain a provision for the segregation and application of tax increments, as provided in 7-15-4282 through 7-15-4292.”

Section 3. Section 7-15-4283, MCA, is amended to read:

“7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292 and 7-15-4297 through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) “Actual taxable value” means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) “Aerospace transportation and technology district” means a tax increment financing aerospace transportation and technology district created pursuant to 7-15-4296.

(3) “Aerospace transportation and technology infrastructure development project” means a project undertaken within or for an aerospace transportation and technology district that consists of any ~~or all~~ of the activities authorized by 7-15-4288.

(4) “Base taxable value” means the actual taxable value of all taxable property within an urban renewal area, industrial district, *technology district*, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) “Incremental taxable value” means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, *technology district*, or aerospace transportation and technology district subject to taxation.

(6) “Industrial district” means a tax increment financing industrial district created pursuant to 7-15-4299.

(7) “Industrial infrastructure development project” means a project undertaken within or for an industrial district that consists of any ~~or all~~ of the activities authorized by 7-15-4288.

(8) “Municipality”, for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, *technology district*, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area, industrial district, *technology district*, or an aerospace transportation and technology district.

(13) "*Technology district*" means a tax increment financing district created pursuant to [section 1].

(14) "*Technology infrastructure development project*" means a project undertaken within or for a technology district that consists of any of the activities authorized by 7-15-4288."

Section 4. Section 7-15-4284, MCA, is amended to read:

"7-15-4284. Filing of tax increment provisions of urban renewal plan or industrial district ordinance. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan, ~~or industrial district ordinance, or technology district ordinance~~ or an amendment ~~thereto to any of them~~ containing a tax increment provision with the ~~state, county, or city officers~~ responsible for assessing and determining the taxable value of taxable property within the urban renewal area or industrial district ordinance or any part thereof ~~department of revenue~~.

(2) A certified copy of ~~the each~~ plan, industrial district ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies."

Section 5. Section 7-15-4285, MCA, is amended to read:

"7-15-4285. Determination and report of original, actual, and incremental taxable values. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the ~~urban renewal area or industrial district~~ department of revenue shall, immediately upon receipt of the tax increment provision and each *succeeding* year ~~thereafter~~, calculate and report to the municipality and to any other affected taxing body the base, actual, and incremental taxable values of ~~such the~~ property."

Section 6. Section 7-15-4286, MCA, is amended to read:

"7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area, ~~or industrial district, or technology district~~ and the base taxable value of all taxable property located within the ~~urban renewal area or industrial district~~. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the ~~urban renewal area or industrial district~~.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the ~~urban renewal area or industrial district~~, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."

Section 7. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, *technology infrastructure*, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
- (6) acquisition of infrastructure-deficient areas or portions of areas;
- (7) administrative costs associated with the management of the *urban renewal area*, industrial district, *technology district*, or the aerospace transportation and technology district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;
- (9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district, *the needs of a technology infrastructure development project in the technology district*, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;
- (10) the connection of the *urban renewal area*, industrial district, *technology district*, or the aerospace transportation and technology district to existing

infrastructure outside the ~~industrial district or the aerospace transportation and technology district~~;

(11) the provision of direct assistance, through industrial infrastructure development projects, *technology development projects*, or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the ~~industrial district or the aerospace transportation and technology district~~; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.”

Section 8. Section 7-15-4290, MCA, is amended to read:

“7-15-4290. Use of property taxes and other revenues revenue for payment of bonds. (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.

(c) *The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.*

(2) ~~Any~~ A municipality issuing ~~such~~ bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other ~~revenues revenue~~ of the municipality, except property taxes prohibited by subsection (2) (3), to the payment of ~~such~~ the bonds if collections of the tax increment are insufficient.

(2)(3) ~~No property~~ Property taxes, except the tax increment derived from property within the ~~urban renewal area or industrial~~ district and tax collections used to pay for services provided to the municipality by ~~an urban renewal project or an industrial infrastructure development~~ a project, may *not* be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.”

Section 9. Section 7-15-4292, MCA, is amended to read:

“7-15-4292. Termination of tax increment financing — exception. (1) The tax increment provision terminates upon the later of:

(a) the 15th year following its adoption ~~or, if the tax increment provision was adopted prior to January 1, 1980, upon the 17th year following adoption~~; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the

various taxing bodies in proportion to their property tax revenue from the district.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area, ~~or~~ the industrial district, *or technology district* and must be paid into the funds of the respective taxing bodies.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions ~~adopted after January 1, 1980, and the 17th anniversary of tax increment provisions adopted prior to January 1, 1980.~~ However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision."

Section 10. Section 7-15-4293, MCA, is amended to read:

"7-15-4293. Adjustment of base taxable value following change of law. If the base taxable value of an urban renewal area, ~~or~~ an industrial district, *or a technology district* is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due."

Section 11. Section 7-15-4301, MCA, is amended to read:

"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, *technology infrastructure development bonds*, and refunding bonds. (1) A municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project, industrial infrastructure development project, ~~or~~ aerospace transportation and technology infrastructure development project, *or technology infrastructure development project* under ~~this part and part 42 and this part,~~ including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for ~~urban renewal the projects, industrial infrastructure development projects, and aerospace transportation and technology infrastructure development projects;~~ and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) The bonds may not pledge the general credit of the municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, ~~revenues~~ *revenue*, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects, industrial infrastructure development projects, ~~or~~ aerospace transportation and technology infrastructure development projects, *or technology infrastructure development projects* under part 42 and this part, including the

tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, and, if the income, proceeds, ~~revenues~~ *revenue*, and funds of the municipality are insufficient for the payment, from other ~~revenues~~ *revenue* of the municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, industrial infrastructure development projects, ~~or~~ aerospace transportation and technology infrastructure development projects, *or technology infrastructure development projects* of the municipality under ~~this part and part 42 and this part~~ or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.”

Section 12. Section 7-15-4304, MCA, is amended to read:

“7-15-4304. Presumption of regularity of bond issuance. In any a suit, action, or proceeding involving the validity or enforceability of, *or security for*, any bond issued under ~~this part and part 42 and this part, or the security therefor, any such~~ a bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, ~~or~~ industrial infrastructure development project, *or technology infrastructure development project as herein defined shall be* is conclusively ~~deemed~~ *considered* to have been issued for ~~such that~~ purpose and ~~such the project shall be~~ is conclusively ~~deemed~~ *considered* to have been planned, located, and carried out in accordance with the provisions of ~~this part and part 42 and this part~~.”

Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 15, part 42, and the provisions of Title 7, chapter 15, part 42, apply to [section 1].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2005

CHAPTER NO. 567

[SB 175]

AN ACT ALLOWING THE USE OF ZONING CLASSIFICATION AS ANOTHER METHOD FOR ASSESSING COSTS WITHIN A STREET MAINTENANCE DISTRICT; AND AMENDING SECTION 7-12-4422, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4422, MCA, is amended to read:

“7-12-4422. Assessment of costs — area, frontage, lot, and taxable valuation options. (1) For the purposes of this section, “assessable area” means the portion of a lot or parcel of land that is benefited by the maintenance district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(2) The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:

(a) each lot or parcel of land within ~~such the~~ district may be assessed for that part of the cost ~~which that~~ its assessable area bears to the assessable area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) each lot or parcel of land within ~~such~~ the district abutting upon a street upon which maintenance is done may be assessed for that part of the cost ~~which~~ that its street frontage bears to the street frontage of the entire district;

(c) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel;

(d) each lot or parcel of land, including the improvements ~~thereon~~ on the lot or parcel, may be assessed for that part of the cost of the district ~~which~~ that its taxable valuation bears to the total taxable valuation of the property of the district; ~~or~~

(e) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated ~~on the basis of the~~ vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

~~(e)~~(f) any combination of the assessment options provided in subsections (2)(a) through ~~(2)(d)~~ (2)(e) may be used for the district as a whole or for any lot or parcel within the district."

Approved May 2, 2005

CHAPTER NO. 568

[SB 212]

AN ACT CLARIFYING THE DISTINCTION BETWEEN DEDICATION AND DISTRIBUTION FOR FEDERAL MINERAL LEASING FUNDS; AMENDING SECTION 17-3-240, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-240, MCA, is amended to read:

"17-3-240. Federal mineral leasing funds. (1) ~~All~~ Except as provided in subsection (2), money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund ~~and must be distributed as provided in subsections (2) and (3).~~

(2) ~~At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of \$21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of \$21,671,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3). At the conclusion of In fiscal year 2005 and each succeeding fiscal year thereafter, the state treasurer shall distribute 25% of all money received pursuant to subsection (3) (1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments.~~

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the ~~distributions~~ revenue dedicated in subsection (2) ~~to the mineral impact account established in 17-3-241.~~ The distribution to the eligible counties must be allocated based on the proportion that the total amount of

revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 569

[SB 213]

AN ACT EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR INVESTMENT IN PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL; AMENDING SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, SECTION 1, CHAPTER 411, LAWS OF 1997, AND SECTIONS 4, 5, 6, AND 7, CHAPTER 398, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9, Chapter 712, Laws of 1991, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ 2011.”

Section 2. Section 4, Chapter 542, Laws of 1995, is amended to read:

“**Section 4.** Section 9, Chapter 712, Laws of 1991, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ 2001.”

Section 3. Section 5, Chapter 542, Laws of 1995, is amended to read:

“**Section 5. Termination — exception.** (1) [Sections 1 through 3] terminate December 31, ~~1997~~ 2011.

(2) Notwithstanding subsection (1), ~~15-32-603(3), as numbered by [this act], which reads: “A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998.”, is deleted in its entirety on December 31, 1997.~~

Section 4. Section 1, Chapter 411, Laws of 1997, is amended to read:

“**Section 1.** Section 5, Chapter 542, Laws of 1995, is amended to read:

“**Section 5. Termination — exception.** (1) [Sections 1 through 3] terminate December 31, ~~1997~~ 2001.”

(2) Notwithstanding subsection (1), ~~15-32-603(3), as numbered by [this act], which reads: “A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998”.~~ is deleted in its entirety on December 31, 1997.”

Section 5. Section 4, Chapter 398, Laws of 2001, is amended to read:

“**Section 4.** Section 9, Chapter 712, Laws of 1991, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ 2005.”

Section 6. Section 5, Chapter 398, Laws of 2001, is amended to read:

“**Section 5.** Section 4, Chapter 542, Laws of 1995, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ 2005.”

Section 7. Section 6, Chapter 398, Laws of 2001, is amended to read:

“Section 6. Section 5, Chapter 542, Laws of 1995, is amended to read:

“Section 5. Termination —exception. ~~(1)~~ [Sections 1 through 3] terminate December 31, ~~1997 2005~~ 2011.

~~(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: “A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998 2006.”, is deleted in its entirety on December 31, 1997 2005.”~~

Section 8. Section 7, Chapter 398, Laws of 2001, is amended to read:

“Section 7. Section 1, Chapter 411, Laws of 1997, is amended to read:

“Section 5. Termination —exception. ~~(1)~~ [Sections 1 through 3] terminate December 31, ~~1997 2005~~ 2011.

~~(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: “A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998 2006.”, is deleted in its entirety on December 31, 1997 2005.”~~

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 570

[SB 224]

AN ACT ALLOWING A SCHOOL DISTRICT TO PROVIDE EDUCATIONAL SERVICES AT AN OFFSITE INSTRUCTIONAL SETTING TO CHILDREN ATTENDING SCHOOL IN THE SCHOOL DISTRICT; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ADOPT RULES; REVISING THE DEFINITION OF “AVERAGE NUMBER BELONGING” TO CLARIFY THE INCLUSION OF PUPILS EDUCATED OFFSITE; DEFINING “OFFSITE INSTRUCTIONAL SETTING”; AMENDING SECTION 20-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Offsite provision of educational services by school district. (1) A school district may provide educational services at an offsite instructional setting, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting. The provision of educational services at an offsite instructional setting by a district is limited to pupils:

(a) meeting the residency requirements for that district as provided in 1-1-215;

(b) living in the district and eligible for educational services under the Individuals with Disabilities Education Act or under 29 U.S.C. 794; or

(c) attending school in the district under a mandatory attendance agreement as provided in 20-5-321.

(2) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section.

Section 2. Section 20-1-101, MCA, is amended to read:

“20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Agricultural experiment station” means the agricultural experiment station established at Montana state university-Bozeman.

(2) “Average number belonging” or “ANB” means the average number of regularly enrolled, full-time pupils *physically attending or receiving educational services at an offsite instructional setting from* the public schools of a district.

(3) “Board of public education” means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4) “Board of regents” means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(5) “Commissioner” means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(6) “County superintendent” means the county government official who is the school officer of the county.

(7) “District superintendent” means a person who holds a valid class 3 Montana teacher certificate with a superintendent’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) “K-12 career and vocational/technical education” means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(9) “*Offsite instructional setting*” means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

~~(9)~~(10) “Principal” means a person who holds a valid class 3 Montana teacher certificate with an applicable principal’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) “Pupil” means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but *who* has not yet reached 19 years of age and who is enrolled in a school established and

maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

~~(12)~~(13) "Regents" means the board of regents of higher education.

~~(13)~~(14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(16) "State university" means Montana state university-Bozeman.

~~(16)~~(17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(18) "System" means the Montana university system.

~~(18)~~(19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(22) "Trustees" means the governing board of a district.

~~(22)~~(23) "University" means the university of Montana-Missoula.

~~(23)~~(24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

Section 4. Effective date — applicability. [This act] is effective July 1, 2005, and applies to school fiscal years beginning on or after July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 571

[SB 260]

AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-623, MCA, is amended to read:

“2-4-623. Final orders — notification — availability. (1) (a) A final decision or order adverse to a party in a contested case ~~shall~~ *must* be in writing or stated in the record. A final decision ~~shall~~ *must* include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall~~ *must* be accompanied by a concise and explicit statement of the underlying facts supporting the findings. *A final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.*

(b) *If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.*

(2) Findings of facts ~~shall~~ *must* be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law ~~shall~~ *must* be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall~~ *must* include a ruling upon each proposed finding.

(5) Parties ~~shall~~ *must* be notified ~~either personally or~~ by mail of any decision or order. Upon request, a copy of the decision or order ~~shall~~ *must* be delivered or mailed ~~forthwith~~ *in a timely manner* to each party and to ~~his~~ *each party's* attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such An agency decision or order is not valid or effective against any person or party nor may and it may not be invoked by the agency for any purpose until it has been made available for public inspection as herein required in this section. This provision is not applicable in favor of any person or party who has actual knowledge thereof of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.”~~

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to contested case hearings commenced after [the effective date of this act].

Approved May 2, 2005

CHAPTER NO. 572

[SB 287]

AN ACT RELATING TO THE REGULATION OF EPHEDRINE AND PSEUDOEPHEDRINE; PROVIDING THAT PRODUCTS CONTAINING AN INGREDIENT OF EPHEDRINE OR PSEUDOEPHEDRINE MUST BE SOLD IN A LICENSED PHARMACY OR A RETAIL ESTABLISHMENT UNDER RESTRICTED CONDITIONS AND IN LIMITED QUANTITIES; PROVIDING A REBUTTABLE PRESUMPTION AND PENALTIES; PROVIDING FOR A VOLUNTARY RETAILER METHAMPHETAMINE WATCH PROGRAM; REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE GRANTS; PROVIDING IMMUNITY FOR A PERSON REPORTING UNDER THE METHAMPHETAMINE WATCH PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restricted possession, purchase, or other transfer of ephedrine or pseudoephedrine — exceptions — penalties. (1) Except as provided in subsection (2), a person may not purchase, receive, or otherwise acquire more than 9 grams of any product, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of optical isomers within any 30-day period.

(2) This section does not apply to any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription or as provided in [section 2].

(3) Possession of more than 9 grams of a drug product containing any detectable quantity of ephedrine, pseudoephedrine, their salts or optical isomers, or salts of optical isomers constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance.

(4) The rebuttable presumption in subsection (3) does not apply to:

- (a) a retail distributor of drug products;
- (b) a wholesale drug distributor, or its agents, licensed by the board of pharmacy;
- (c) a manufacturer of drug products or its agents;
- (d) a pharmacist licensed by the board of pharmacy; or
- (e) a licensed health care professional possessing the drug products in the course of carrying out the profession.

(5) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 1 year.

Section 2. Restricted sale and access to ephedrine or pseudoephedrine products — exceptions — penalties. (1) The retail sale of a product that contains any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers may be sold only in a pharmacy licensed pursuant to Title 37, chapter 7, or a retail establishment that is certified by the department of justice pursuant to subsection (2).

(2) (a) If there is not a licensed community pharmacy within a county, then a retail establishment may apply to the department of justice for certification as an establishment that is allowed to sell products that contain any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(b) The department of justice shall adopt rules to establish criteria for the certification of retail establishments with the intent to limit the available supply of ephedrine and pseudoephedrine to prevent the manufacture of methamphetamine.

(c) The department of justice may certify a retail establishment based on the criteria adopted by rule.

(3) Except as provided in subsection (5), a licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall:

(a) display the products containing ephedrine or pseudoephedrine behind the store counter in an area that is not accessible to customers or in a locked case so that a customer is required to ask an employee of the licensed pharmacy or certified retail establishment for assistance in purchasing the product;

(b) limit sales to packages containing no more than a total of 9 grams;

(c) require the person purchasing, receiving, or otherwise acquiring any product, mixture, or preparation containing ephedrine or pseudoephedrine to produce a driver's license or other form of photo identification and sign a record of sale or acquisition that includes the date of the transaction, the name of the person purchasing or acquiring the ephedrine or pseudoephedrine, and the number of grams of the product, mixture, or preparation purchased or acquired;

(d) take action as necessary to ensure that a person does not purchase or acquire more than 9 grams of ephedrine or pseudoephedrine from the licensed pharmacy or certified retail establishment provided for in subsection (1) in any 30-day period.

(4) A licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall maintain all records made under subsection (3) in a secure, centralized location. Each record must be maintained by the licensed pharmacy or certified retail establishment provided for in subsection (1) for 2 years. The licensed pharmacy or certified retail establishment provided for in subsection (1) shall provide access to sales records by law enforcement officials.

(5) This section does not apply to:

(a) any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription;

(b) products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient;

(c) a product that the board, upon application by a manufacturer, exempts from this section by rule because the product has been formulated in a manner as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.

(6) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 1 year.

Section 3. Definitions. For the purposes of [sections 3 through 7], the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "Program" means the methamphetamine watch program established under [sections 3 through 7].

(3) "Retailer" means a business establishment in this state that engages in over-the-counter retail sales of any product containing ephedrine or pseudoephedrine or a precursor to methamphetamine.

Section 4. Establishment of methamphetamine watch program. The department shall establish a methamphetamine watch program to:

(1) inform retailers of the problems associated with the illicit manufacture and use of methamphetamine in this state;

(2) establish procedures and develop forms for retailers and other persons to use in reporting to law enforcement any incidents of theft, suspicious purchases, or other transactions involving products that may be used in the illicit manufacture of methamphetamine;

(3) increase community awareness of methamphetamine;

(4) encourage retailers, law enforcement, state and local agencies, and other persons to cooperate in efforts to reduce the diversion of legitimate products for use in the illicit manufacture of methamphetamine; and

(5) assist local communities in addressing problems created by the illicit manufacture and use of methamphetamine.

Section 5. Retailer participation. (1) Retailer participation in the program is voluntary.

(2) A retailer participating in the program shall make reasonable efforts to deter the theft or improper sale of products used in the illicit manufacture of methamphetamine, including products containing ephedrine and pseudoephedrine, by:

(a) implementing product management practices that deter theft or suspicious purchases of the products, including placing signs at strategic locations within the retail establishment to inform patrons of the retailer's participation in the program; and

(b) providing annual personnel training on products used in the illicit manufacture of methamphetamine and procedures to follow on observing theft or suspicious purchases of those products.

Section 6. Grants. (1) The department shall provide grants for public and private organizations to engage in initiatives designed to support the program. The grant recipient may use grant money only to pay for activities directly related to the purpose of the initiative to support the program.

(2) The department may accept gifts, grants, donations, and other contributions for the purpose of providing grants.

Section 7. Reporting — immunity from liability. A person may not be held liable for any damages arising from an act relating to the reporting of

information made in good faith and in substantial compliance with the reporting procedures established under [section 4].

Section 8. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 32, and the provisions of Title 50, chapter 32, apply to [sections 1 and 2].

(2) [Sections 3 through 7] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 3 through 7].

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved May 2, 2005

CHAPTER NO. 573

[SB 339]

AN ACT PROVIDING FOR THE ISSUANCE OF A FREE RESIDENT WILDLIFE CONSERVATION LICENSE OR A REDUCED-RATE CLASS AAA RESIDENT COMBINATION SPORTS LICENSE FOR RESIDENT MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY MILITARY PERSONNEL RETURNING FROM AN OUT-OF-STATE CONTINGENCY OPERATION IN THE YEAR OF OR YEAR FOLLOWING THE SERVICE MEMBER'S RETURN AND IN THE FOLLOWING YEAR; ALLOWING RESIDENT MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY MILITARY PERSONNEL WHO HAVE SERVED IN AN OUT-OF-STATE CONTINGENCY OPERATION SINCE SEPTEMBER 11, 2001, AN OPPORTUNITY TO OBTAIN THE FREE OR REDUCED-RATE LICENSE FOR A 2-YEAR PERIOD TO COMMENCE IN 2006 OR 2007; AMENDING SECTIONS 87-2-202, 87-2-711, AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-202, MCA, is amended to read:

“87-2-202. Application — fee — expiration. (1) ~~A~~ *Except as provided in 87-2-803(11), a* wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license *or to receive a free wildlife conservation license pursuant to 87-2-803(11).* It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$6.25, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$9.25, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Subsections (3)(c) and (3)(d) terminate March 1, 2006—sec. 9, Ch. 216, L. 2001; bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)”

Section 2. Section 87-2-711, MCA, is amended to read:

“87-2-711. (Temporary) Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) ~~upon payment of the sum of \$54, plus the resident hunting access enhancement fee in 87-2-202(3)(e);~~ a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5; licenses and resident conservation licenses as prescribed in 87-2-202 *upon payment of the sum of \$54, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), or if the resident is a service member eligible for a combination sports license pursuant to 87-2-803(11), upon payment of \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c);* or

(b) ~~upon payment of the sum of \$64, plus the resident hunting access enhancement fee in 87-2-202(3)(c),~~ a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license *upon payment of the sum of \$64, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c).*

(2) The department may furnish each holder of a combination sports license an appropriate decal. (Terminates March 1, 2006—sec. 9, Ch. 216, L. 2001.)

87-2-711. (Effective March 1, 2006) Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) ~~upon payment of the sum of \$54,~~ a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5; *licenses* and resident conservation licenses as prescribed in 87-2-202 *upon payment of the sum of \$54, or if the resident is a service member eligible for a combination sports license pursuant to 87-2-803(11), upon payment of \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c); or*

(b) ~~upon payment of the sum of \$64,~~ a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license *upon payment of the sum of \$64.*

(2) The department may furnish each holder of a combination sports license an appropriate decal.”

Section 3. Section 87-2-803, MCA, is amended to read:

“87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (8). The department shall adopt rules to establish a voluntary board or boards of review

to resolve any disputes over whether a person meets the criteria established in subsection (8). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(6) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(7) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(8) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(9) Certification by a licensed physician under subsection (8) must be on a form provided by the department.

(10) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(11) (a) *A Montana resident who is a member of the Montana national guard, the federal reserve as provided in 10 U.S.C. 10101, or was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (11)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a \$25 Class AAA resident combination sports license in the year of election and the license year after the member's election.*

(b) *To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (11)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2005

CHAPTER NO. 574

[SB 342]

AN ACT CREATING AN ALTERNATIVE PROJECT DELIVERY CONTRACT PROCESS FOR CERTAIN CONSTRUCTION PROJECTS OF STATE AGENCIES AND CERTAIN LOCAL GOVERNMENTS; ESTABLISHING REQUIREMENTS THAT MUST BE MET IN ORDER TO USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING JUSTIFICATION FOR AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING A STATE AGENCY OR CERTAIN LOCAL GOVERNMENTS THAT USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT TO STATE THE REASONS FOR SELECTING THE CONTRACTOR SELECTED; AND AMENDING SECTIONS 7-5-2301, 7-5-4302, 18-1-102, 18-2-103, 18-4-124, 20-6-606, 20-9-204, AND 67-11-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], unless the context clearly requires otherwise, the following definitions apply:

(1) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion. (3) "Contractor" has the meaning provided in 18-4-123.

(4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) "Governing body" means the legislative authority of:

(a) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(b) a school district established pursuant to Title 20; or

(c) an airport authority established pursuant to Title 67, chapter 11.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) "State agency" has the meaning provided in 2-2-102, except the department of transportation, provided for in 2-15-2501, is not considered a state agency.

Section 2. Alternative project delivery contract — authority — criteria. (1) Subject to the provisions of [sections 1 through 3], a state agency or a governing body may use an alternative project delivery contract. A state agency or governing body that uses an alternative project delivery contract shall:

(a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract;

(b) clearly describe the manner in which:

(i) the alternative project delivery contract award process will be conducted; and

(ii) subcontractors and suppliers will be selected.

(2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the governing body shall make a detailed written finding that:

(a) the project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency or the

governing body may consider in making its findings include, but are not limited to:

(i) operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early project completion;

(ii) demonstrable public benefits that result from less time for construction; or

(iii) less or a shorter duration of disruption to the public facility.

(b) by using an alternative project delivery contract, the design process will contribute to significant cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

(c) the project presents significant technical complexities that necessitate the use of an alternative delivery project contract.

(3) The state agency or the governing body shall make a detailed written finding that using an alternative project delivery contract will not:

(a) encourage favoritism or bias in awarding the contract; or

(b) substantially diminish competition for the contract.

Section 3. Alternative project delivery contract — award criteria.

(1) (a) Whenever a state agency or a governing body determines, pursuant to [section 2], that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to [sections 1 through 3], architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

Section 4. Section 7-5-2301, MCA, is amended to read:

“7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304 and *[sections 1 through 3]*, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of \$50,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and *except as provided in [sections 1 through 3]*, every contract subject to bidding must be let to the lowest responsible bidder.”

Section 5. Section 7-5-4302, MCA, is amended to read:

“7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, ~~or 7-5-4310, or~~ *[sections 1 through 3]*, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of \$20,000 or for construction, repair, or maintenance in excess of \$25,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may:

(a) ~~postpone action on any~~ *award* a contract until the next regular meeting after bids are received in response to the advertisement;

(b) ~~and may~~ reject any *or all* bids; and

(c) readvertise as provided in this section.”

Section 6. Section 18-1-102, MCA, is amended to read:

“18-1-102. State contracts to lowest bidder — reciprocity. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall, *except as provided in [sections 1 through 3]*, award:

(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.”

Section 7. Section 18-2-103, MCA, is amended to read:

“18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, *except as provided in [sections 1 through 3]*, award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are \$75,000 or less. However, with respect to a project having a proposed cost of \$75,000 or less but more than \$25,000, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. “Construction” includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department’s construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract.”

Section 8. Section 18-4-124, MCA, is amended to read:

“18-4-124. Local government adoption of procurement provisions — alternative project delivery contracts. (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

(2) *A governing body, as defined in [section 1], may adopt the provisions of [sections 1 through 3] and use an alternative project delivery contract.”*

Section 9. Section 20-6-606, MCA, is amended to read:

“20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building ~~shall~~ *must* be conducted under the provisions of 20-9-204 or [sections 1 through 3].”

Section 10. Section 20-9-204, MCA, is amended to read:

“20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee’s own school district.

(2) For the purposes of subsection (1):

(a) “pecuniary interest” does not include holding an interest of 10% or less in a corporation;

(b) “contract” does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsection (4) of this section, whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$25,000, the work done or the purchase made must be by contract. ~~Each~~ *Except as provided in [sections 1 through 3], each* contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The

advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; ~~or~~

(g) an accountant licensed under Title 37, chapter 50; or

(h) *a project, as defined in [section 1], for which a governing body, as defined in [section 1], enters into an alternative project delivery contract pursuant to [sections 1 through 3].*

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) ~~Whenever~~ *Except as provided in [sections 1 through 3], whenever* bidding is required, the contract must be awarded to the lowest responsible bidder, except that *any or all* bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district."

Section 11. Section 67-11-201, MCA, is amended to read:

"67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes. Authority powers include but are not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts, *including alternative project delivery contracts as provided for in [sections 1 through 3],* and other instruments and take other action that may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation

at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities. However, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or a public agency of this or any other state without the consent of the authority, municipality, or public agency.

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport.”

Section 12. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [sections 1 through 3].

Approved May 2, 2005

CHAPTER NO. 575

[SB 401]

AN ACT REVISING CHAPTER 1 AND CHAPTER 7 OF THE UNIFORM COMMERCIAL CODE; REVISING CHAPTER 1 TO REFLECT THE SCOPE OF THE CHAPTER, THE APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW, THE CONCEPT OF GOOD FAITH, CHOICE OF LAW, THE RELEVANCE OF COURSE OF PERFORMANCE BETWEEN THE PARTIES, AND THE EXISTENCE OF AN INDEPENDENT STATUTE OF FRAUDS; REVISING CHAPTER 7, CONCERNING DOCUMENTS OF TITLE, TO REFLECT THE DEVELOPMENT OF ELECTRONIC DOCUMENTS OF TITLE; REVISING OTHER PROVISIONS TO REFLECT THE REVISIONS TO CHAPTER 1 AND CHAPTER 7; AMENDING SECTIONS 30-1-101, 30-1-102, 30-1-107, 30-1-201, 30-1-204, 30-1-205, 30-1-208, 30-1-209, 30-2-104, 30-2-310, 30-2-323, 30-2-401, 30-2-503, 30-2-506, 30-2-509, 30-2-605, 30-2-705, 30-2A-103, 30-2A-514, 30-2A-518, 30-2A-519, 30-2A-526, 30-2A-527, 30-2A-528, 30-3-102, 30-4-104, 30-4A-105, 30-4A-106, 30-5-123, 30-7-102, 30-7-103, 30-7-104, 30-7-201, 30-7-202, 30-7-203, 30-7-204, 30-7-205, 30-7-206, 30-7-207, 30-7-208, 30-7-209, 30-7-210, 30-7-301, 30-7-302, 30-7-303, 30-7-304, 30-7-305, 30-7-307, 30-7-308, 30-7-309, 30-7-401, 30-7-402, 30-7-403, 30-7-404, 30-7-501, 30-7-502, 30-7-503, 30-7-504, 30-7-506, 30-7-507, 30-7-508, 30-7-509, 30-7-601, 30-7-602, 30-7-603, 30-8-113, 30-9A-102, 30-9A-203, 30-9A-207, 30-9A-208,

30-9A-301, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-317, 30-9A-338, 30-9A-601, 30-18-103, 30-18-115, 45-6-315, AND 71-3-125, MCA; REPEALING SECTIONS 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, AND 30-7-706, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-1-101, MCA, is amended to read:

“30-1-101. Short title titles — scope of chapter. (1) Chapters 1 through 9A of this title ~~shall be known and~~ may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9A of this title “code” means “Uniform Commercial Code” unless the context indicates otherwise.

(3) *This chapter may be cited as the Uniform Commercial Code - General Provisions.*

(4) *This chapter applies to a transaction to the extent that it is governed by chapters 2 through 5, 7, 8, and 9A of this title.”*

Section 2. Section 30-1-102, MCA, is amended to read:

“30-1-102. Purposes — rules of construction — ~~variation by agreement.~~ (1) This code ~~shall~~ *must* be liberally construed and applied to promote its underlying purposes and policies:

~~(2) Underlying purposes and policies of this code, which are:~~

(a) to simplify, clarify, and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

~~(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.~~

~~(4) The presence in certain provisions of this code of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).~~

~~(5)~~(2) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.”

Section 3. Section 30-1-107, MCA, is amended to read:

“30-1-107. Waiver or renunciation of claim or right after breach. ~~Any~~ A claim or right arising out of an alleged breach ~~can~~ *may* be discharged in whole or in part without consideration by a written waiver or renunciation signed and ~~delivered by agreement of the aggrieved party in an authenticated record.”~~

Section 4. Section 30-1-201, MCA, is amended to read:

“30-1-201. General definitions. *(1) Unless the context requires otherwise, words or phrases defined in this section, or in the additional definitions contained in other chapters of the code that apply to particular chapters or parts of chapters, have the meanings stated.*

(2) Subject to additional definitions contained in the subsequent other chapters of this code that are applicable apply to specific chapters or parts thereof of chapters, and unless the context otherwise requires, in this code:

~~(1)(a)~~ *“Action” in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings proceeding in which rights are determined.*

~~(2)(b)~~ *“Aggrieved party” means a party entitled to resort to pursue a remedy.*

~~(3)(c)~~ *“Agreement” means the bargain of the parties in fact, as found in their language or by implication inferred from other circumstances, including course of performance, course of dealing, or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).*

(d) “Authenticate” means to:

(i) sign; or

(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

(A) identify the authenticating party; and

(B) adopt, accept, or establish the authenticity of a record or term.

~~(4)(e)~~ *“Bank” means any person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.*

~~(5)(f)~~ *“Bearer” means the a person in control of a negotiable electronic document of title or a person in possession of an a negotiable instrument, negotiable tangible document of title, or certificated security payable to bearer or endorsed in blank.*

~~(6)(g) (i)~~ *“Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods, and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.*

(ii) The term does not include a warehouse receipt.

~~(7)(h)~~ *“Branch” includes a separately incorporated foreign branch of a bank.*

~~(8)(i)~~ *“Burden of establishing” a fact means the burden of persuading the triers trier of fact that the existence of the fact is more probable than its nonexistence.*

~~(9)(j)~~ *“Buyer in ordinary course of business” means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with*

the seller's own usual or customary practices. A person that sells oil, gas, or other ~~mineral~~ *minerals* at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

~~(10)(k)~~ *"Conspicuous",--A with reference to a term, or clause is conspicuous when it is means so written, displayed, or presented that a reasonable person against whom which it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court. Conspicuous terms include the following:*

(i) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(ii) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(l) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

~~(11)(m)~~ *"Contract" means the total legal obligation which that results from the parties' agreement as affected by this code and as supplemented by any other applicable rules of law.*

~~(12)(n)~~ *"Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.*

~~(13)(o)~~ *"Defendant" includes a person in the position of defendant in a cross-action or counterclaim or third party claim.*

~~(14)(p)~~ *"Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, or chattel paper, or certificated securities means voluntary transfer of possession.*

~~(15)(q)~~ *(i) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which means a record:*

(A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the document record and the goods it the record covers; and

(B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. To be a document of title a document must purport to be issued

~~by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.~~

(ii) The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium.

~~(16)(r) "Fault" means wrongful act, omission, or breach, or default.~~

~~(17)(s) "Fungible" with respect to "Fungible goods" or securities means:~~

~~(i) goods or securities of which any unit is, by nature or usage of trade, is the equivalent of any other like unit; or Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular~~

~~(ii) goods which by agreement or document unlike units are treated as equivalents equivalent.~~

~~(18)(t) "Genuine" means free of forgery or counterfeiting.~~

~~(19)(u) "Good faith", except as otherwise provided in chapter 5, means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.~~

~~(20)(v) "Holder", with respect to a means:~~

~~(a)(i) negotiable instrument, means the person in possession if the of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;~~

~~(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or~~

~~(e)(ii) a person in possession of a negotiable tangible document of title, means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession; or~~

~~(iii) a person in control of a negotiable electronic document of title.~~

~~(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.~~

~~(22)(w) "Insolvency proceedings" includes any an assignment for the benefit of creditors or other proceedings proceeding intended to liquidate or rehabilitate the estate of the person involved.~~

~~(23)(x) "Insolvent" means:~~

~~(i) A person is "insolvent" who either has having generally ceased to pay his debts in the ordinary course of business other than as a result of bona fide dispute;~~

~~(ii) or cannot unable to pay his debts as they become due; or~~

~~(iii) is insolvent within the meaning of the federal bankruptcy law.~~

~~(24)(y) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an or intergovernmental organization or by agreement between two or more countries.~~

~~(25) A person has "notice" of a fact when:~~

~~(a) he has actual knowledge of it; or~~

~~(b) he has received a notice or notification of it; or~~

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

~~(a) it comes to his attention; or~~

~~(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.~~

~~(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.~~

(28)(z) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity means a person other than an individual.

(29)(aa) "Party", as distinct from "third party", means a person ~~who~~ *that* has engaged in a transaction or made an agreement ~~within~~ *subject to* this code.

(30)(bb) "Person" ~~includes~~ *means* an individual, ~~or an organization corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.~~

(31)(cc) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32)(dd) "Purchase" ~~includes~~ *means* taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33)(ee) "Purchaser" means a person ~~who~~ *that* takes by purchase.

(ff) "Record" *means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

(34)(gg) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~(35)(hh)~~ “Representative” ~~includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or means any other person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.~~

~~(36)(ii)~~ “Rights” “Right” includes ~~remedies~~ a remedy.

~~(37)(jj)~~ ~~(a)~~ “Security interest” means an interest in personal property or fixtures ~~that~~ *which* secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9A. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with chapter 9A. Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with chapter 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a “security interest”. Whether a transaction ~~creates in the form of a lease or security interest is determined by the facts of each case; however, a transaction creates a “security interest” if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:~~

~~(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;~~

~~(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;~~

~~(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or~~

~~(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement is determined pursuant to [section 10].~~

~~(b) A transaction does not create a security interest merely because it provides that:~~

~~(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;~~

~~(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;~~

~~(iii) the lessee has an option to renew the lease or to become the owner of the goods;~~

~~(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or~~

~~(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~(c) For purposes of this subsection (37):~~

~~(i) additional consideration is not nominal if:~~

~~(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or~~

~~(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;~~

~~(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

~~(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and~~

~~(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

~~(38)(kk) "Send" in connection with any a writing, record, or notice means:~~

~~(i) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending~~

~~(ii) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.~~

~~(39)(ll) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate adopt or accept a writing.~~

~~(40)(mm) "Surety" includes a guarantor or other secondary obligor.~~

~~(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(42)(nn) "Term" means that a portion of an agreement which that relates to a particular matter.~~

~~(43)(oo) "Unauthorized" signature means one a signature made without actual, implied, or apparent authority. and The term includes a forgery.~~

~~(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:~~

~~(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or~~

~~(b) as security for or in total or partial satisfaction of a preexisting claim; or~~

~~(c) by accepting delivery pursuant to a preexisting contract for purchase; or~~

~~(d) generally, in return for any consideration sufficient to support a simple contract.~~

~~(45)(pp)~~ “Warehouse receipt” means a receipt document of title issued by a person engaged in the business of storing goods for hire.

~~(46)(qq)~~ “Written” or “writing” “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.”

Section 5. Section 30-1-204, MCA, is amended to read:

“30-1-204. Time — reasonable Reasonable time — “seasonably” seasonableness. (1) ~~Whenever~~ *Whether a time for taking an action required by this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.*

~~(2) What is a reasonable time for taking any action~~ depends on the nature, purpose, and circumstances of ~~such~~ *the* action.

~~(3)(2)~~ An action is taken “seasonably” ~~when if~~ it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.”

Section 6. Section 30-1-205, MCA, is amended to read:

“30-1-205. Course of performance, course of dealing, and usage of trade. (1) *A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:*

(a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

~~(1)(2)~~ A “course of dealing” is a sequence of ~~previous~~ *conduct concerning previous transactions* between the parties to a particular transaction ~~which that~~ is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

~~(2)(3)~~ A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a ~~written~~ trade code or similar ~~writing~~ record, the interpretation of the ~~writing~~ record is ~~for the court~~ *a question of law.*

~~(3)(4)~~ A *course of performance* or course of dealing between the parties ~~and any~~ or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware ~~give particular~~ *is relevant in ascertaining the meaning to and supplement or qualify terms of an of the parties’ agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.*

~~(4)(5)~~ ~~The~~ *Except as otherwise provided in subsection (6), the* express terms of an agreement and ~~an any~~ *applicable course of performance, course of dealing, or usage of trade shall must* be construed wherever reasonable as consistent with each other; ~~but when~~ *If* such a construction is unreasonable:

(a) express terms control both prevail over course of performance, course of dealing, and usage of trade;

(b) *course of performance prevails over course of dealing and usage of trade;*
and

(c) *course of dealing ~~controls~~ prevails over usage of trade.*

~~(5)(6) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part. Subject to 30-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of the performance.~~

~~(6)(7) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he that party has given the other party such notice as that the court finds sufficient to prevent unfair surprise to the latter other party."~~

Section 7. Section 30-1-208, MCA, is amended to read:

"30-1-208. Option to accelerate at will. A term providing that one party or ~~his that party's~~ successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he the party~~ "deems ~~himself itself~~ insecure" or in words of similar import, ~~shall be construed to mean that he shall have~~ means that the party has power to do so only if ~~he that~~ party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against ~~whom which~~ the power has been exercised."

Section 8. Section 30-1-209, MCA, is amended to read:

"30-1-209. Subordinated obligations. An obligation may be issued as subordinated to ~~payment performance~~ of another obligation of the person obligated, or a creditor may subordinate ~~his its~~ right to ~~payment performance~~ of an obligation by agreement with either the person obligated or another creditor of the person obligated. ~~Such a subordination~~ Subordination does not create a security interest as against either the common debtor or a subordinated creditor. ~~This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it."~~

Section 9. Notice — knowledge. (1) Subject to subsection (6), a person has "notice" of a fact if the person:

(a) has actual knowledge of it;

(b) has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2) "Knowledge" means actual knowledge.

(3) "Discover", "learn", or words of similar import refer to knowledge rather than to notice.

(4) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course, whether or not the other person actually comes to know of it.

(5) Subject to subsection (6), a person "receives" a notice or notification when:

(a) it comes to that person's attention; or

(b) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(6) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Section 10. Lease distinguished from security interest. (1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods;

(c) the lessee agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(d) the lessee has an option to renew the lease or to become the owner of the goods;

(e) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(f) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(a) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(b) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(c) The “remaining economic life of the goods” and “reasonably predictable” fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Section 11. Value. Except as otherwise provided in chapters 3 through 5, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

Section 12. Territorial applicability — parties power to choose applicable law. (1) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1) and except as provided in subsection (3), this code applies to transactions bearing an appropriate relation to this state.

(3) If one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) Section 30-2-402;

(b) Sections 30-2A-105 and 30-2A-106;

(c) Section 30-4-102;

(d) Section 30-4A-507;

(e) Section 30-5-136;

(f) Section 30-8-120;

(g) Sections 30-9A-301 through 30-9A-307.

Section 13. Variation by agreement. (1) Except as otherwise provided in subsection (2) or elsewhere in this code, the effect of provisions of this code may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this code of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Section 14. Section 30-2-104, MCA, is amended to read:

“30-2-104. Definitions — “merchant” — “between merchants” — “financing agency”. (1) “Merchant” means a person ~~who~~ *that* deals in goods of the kind or otherwise ~~by his occupation holds himself out~~ *is held out by occupation* as having knowledge or skill peculiar to the practices or goods involved in the transaction or to ~~whom such~~ *which the* knowledge or skill may be attributed by ~~his~~ *the person’s* employment of an agent or broker or other intermediary ~~who by his occupation holds himself~~ *that is held out by occupation* as having ~~such~~ *the* knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person ~~who~~ *that* in the ordinary course of business makes advances against goods or documents of title or ~~who that~~ by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany *or are associated with* the draft. “Financing agency” includes also a bank or other person ~~who that~~ similarly intervenes between persons ~~who that~~ are in the position of seller and buyer in respect to the goods (30-2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.”

Section 15. Section 30-2-310, MCA, is amended to read:

“30-2-310. Open time for payment or running of credit — authority to ship under reservation. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods ~~he the seller~~ may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due *regardless of where the goods are to be received*:

(i) at the time and place at which the buyer is to receive *delivery of the tangible* documents ~~regardless of where the goods are to be received~~;

(ii) *at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or, if none, the seller’s residence*; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.”

Section 16. Section 30-2-323, MCA, is amended to read:

“30-2-323. Form of bill of lading required in overseas shipment — “overseas”. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise

agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a *tangible* bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce."

Section 17. Section 30-2-401, MCA, is amended to read:

"30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require ~~him~~ *the seller* to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a *tangible* document of title, title passes at the time when and the place where ~~he~~ *the seller* delivers such documents *and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document*; or

(b) if the goods are at the time of contracting already identified and no documents *of title* are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance ~~revests~~ *retests* title to the goods in the seller. Such ~~revesting~~ *retesting* occurs by operation of law and is not a "sale".

Section 18. Section 30-2-503, MCA, is amended to read:

"30-2-503. Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable ~~him~~ *the buyer* to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that ~~he~~ *the seller* comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record directing~~ the bailee to deliver is sufficient tender unless the buyer seasonably objects, and *except as otherwise provided in chapter 9A* receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) ~~he the seller~~ must tender all such documents in correct form, ~~except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and~~

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.”

Section 19. Section 30-2-506, MCA, is amended to read:

“30-2-506. Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper’s right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face.~~”

Section 20. Section 30-2-509, MCA, is amended to read:

“30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require ~~him the seller~~ to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are ~~duly~~ delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require ~~him the seller~~ to deliver them at a particular destination and the goods are there ~~duly~~ tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there ~~duly~~ so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on ~~his the buyer’s~~ receipt of *possession or control* of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer’s right to possession of the goods; or

(c) after his receipt of *possession or control* of a nonnegotiable document of title or other ~~written~~ direction to deliver *in a record*, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on ~~his the buyer’s~~ receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).”

Section 21. Section 30-2-605, MCA, is amended to read:

“30-2-605. Waiver of buyer’s objections by failure to particularize. (1) The buyer’s failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes ~~him the buyer~~ from relying on the unstated defect to justify rejection or to establish breach:

- (a) where the seller could have cured it if stated seasonably; or
 - (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
- (2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ *in* the documents.”

Section 22. Section 30-2-705, MCA, is amended to read:

“30-2-705. Seller’s stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when ~~he~~ *the seller* discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

- (2) As against such buyer the seller may stop delivery until:
- (a) receipt of the goods by the buyer; or
 - (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~ *a warehouse*; or
 - (d) negotiation to the buyer of any negotiable document of title covering the goods.
- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
- (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of *possession or control* of the document.
- (d) A carrier ~~who~~ *that* has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.”

Section 23. Section 30-2A-103, MCA, is amended to read:

“30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

- (a) “Buyer in ordinary course of business” means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ *acquiring* goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (b) “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles,

or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a ~~sublessee~~ *sublease*.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ *acquiring* goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is

determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

- (a) "Accessions". 30-2A-310(1).
- (b) "Construction mortgage". 30-2A-309(1)(d).
- (c) "Encumbrance". 30-2A-309(1)(e).
- (d) "Fixtures". 30-2A-309(1)(a).
- (e) "Fixture filing". 30-2A-309(1)(b).
- (f) "Purchase money lease". 30-2A-309(1)(c).
- (3) The following definitions in other chapters apply to this chapter:
 - (a) "Account". 30-9A-102(1)(b).
 - (b) "Between merchants". 30-2-104(3).
 - (c) "Buyer". 30-2-103(1)(a).
 - (d) "Chattel paper". 30-9A-102(1)(k).
 - (e) "Consumer goods". 30-9A-102(1)(w).
 - (f) "Document". 30-9A-102(1)(dd).
 - (g) "Entrusting". 30-2-403(3).
 - (h) "General intangible". 30-9A-102(1)(pp).
 - (i) "Good faith". 30-2-103(1)(b).
 - (j) "Instrument". 30-9A-102(1)(uu).
 - (k) "Merchant". 30-2-104(1).
 - (l) "Mortgage". 30-9A-102(1)(ccc).
 - (m) "Pursuant to commitment". 30-9A-102(1)(ppp).
 - (n) "Receipt". 30-2-103(1)(c).
 - (o) "Sale". 30-2-106(1).
 - (p) "Sale on approval". 30-2-326.
 - (q) "Sale or return". 30-2-326.
 - (r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter.”

Section 24. Section 30-2A-514, MCA, is amended to read:

“30-2A-514. Waiver of lessee’s objections. (1) In rejecting goods, a lessee’s failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (30-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ *in* the documents.”

Section 25. Section 30-2A-518, MCA, is amended to read:

“30-2A-518. Cover — substitute goods. (1) After a default by a lessor under the lease contract of the type described in 30-2A-508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties ~~(30-1-102(3) and~~ 30-2A-503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor’s default.

(3) If a lessee’s cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 30-2A-519 governs.”

Section 26. Section 30-2A-519, MCA, is amended to read:

“30-2A-519. Lessee’s damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties ~~(30-1-102(3) and~~ 30-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under 30-2A-518(2) or is by purchase or otherwise, the measure of

damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (30-2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty."

Section 27. Section 30-2A-526, MCA, is amended to read:

"30-2A-526. Lessor's stoppage of delivery in transit or otherwise. (1)

A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ *a warehouse*.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

Section 28. Section 30-2A-527, MCA, is amended to read:

"30-2A-527. Lessor's rights to dispose of goods. (1) After a default by a lessee under the lease contract described in 30-2A-523(1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (30-2A-525 or 30-2A-526)

or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 30-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (30-2A-508(5))."

Section 29. Section 30-2A-528, MCA, is amended to read:

"30-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 30-2A-527(2) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 30-2A-523(1) or (3)(a) or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, that the lessor would have made from full performance by the lessee, together with any incidental damages allowed under 30-2A-530, allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition."

Section 30. Section 30-3-102, MCA, is amended to read:

"30-3-102. Definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

- (a) "Acceptor" means a drawee that has accepted a draft.
- (b) "Drawee" means a person ordered in a draft to make payment.
- (c) "Drawer" means a person that signs a draft as a person ordering payment.
- (d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (e) "Maker" means a person that signs a note as promisor of payment.
- (f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.
- (h) "Party" means party to an instrument.
- (i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- (j) "Prove" with respect to a fact means to meet the burden of establishing the fact ~~(30-1-201(8))~~ 30-1-201(2)(i).
- (k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

- "Acceptance". 30-3-410.
- "Accommodated party". 30-3-415.
- "Accommodation party". 30-3-415.
- "Alteration". 30-3-407.
- "Anomalous indorsement". 30-3-204.
- "Blank indorsement". 30-3-204.

“Cashier’s check”. 30-3-104.
“Certificate of deposit”. 30-3-104.
“Certified check”. 30-3-410.
“Check”. 30-3-104.
“Consideration”. 30-3-303.
“Draft”. 30-3-104.
“Fiduciary”. 30-3-308.
“Holder in due course”. 30-3-302.
“Incomplete instrument”. 30-3-115.
“Indorsement”. 30-3-203.
“Indorser”. 30-3-203.
“Instrument”. 30-3-104.
“Issue”. 30-3-125.
“Issuer”. 30-3-125.
“Negotiable instrument”. 30-3-104.
“Negotiation”. 30-3-202.
“Note”. 30-3-104.
“Payable at a definite time”. 30-3-109.
“Payable on demand”. 30-3-108.
“Payable to bearer”. 30-3-111.
“Payable to order”. 30-3-111.
“Payment”. 30-3-603.
“Person entitled to enforce”. 30-3-301.
“Presentment”. 30-3-504.
“Reacquisition”. 30-3-208.
“Represented person”. 30-3-308.
“Special indorsement”. 30-3-204.
“Teller’s check”. 30-3-104.
“Transfer of instrument”. 30-3-210.
“Traveler’s check”. 30-3-104.
“Value”. 30-3-303.
(3) The following definitions in other chapters apply to this chapter:
“Bank”. 30-4-105.
“Banking day”. 30-4-104.
“Clearinghouse”. 30-4-104.
“Collecting bank”. 30-4-105.
“Customer”. 30-4-104.
“Depositary bank”. 30-4-105.
“Documentary draft”. 30-4-104.

“Intermediary bank”. 30-4-105.

“Item”. 30-4-104.

“Payor bank”. 30-4-105.

“Suspends payments”. 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.”

Section 31. Section 30-4-104, MCA, is amended to read:

“30-4-104. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) “account” means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) “afternoon” means the period of a day between noon and midnight;

(c) “banking day” means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) “clearinghouse” means an association of banks or other payors regularly clearing items;

(e) “customer” means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank;

(f) “documentary draft” means a draft to be presented for acceptance or payment if specified documents, certificated securities (30-8-112) or instructions for uncertificated securities (30-8-112), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) “draft” means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order;

(h) “item” means an instrument or a promise or an order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip.

(i) “midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(j) “settle” means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(k) “suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

“Bank”. 30-4-105.

“Collecting bank”. 30-4-105.

“Depository bank”. 30-4-105.

“Intermediary bank”. 30-4-105.

“Payor bank”. 30-4-105.

“Presenting bank”. 30-4-105.

“Presentment notice”. 30-4-111.

(3) The following definitions in other chapters apply to this chapter:

“Acceptance”. 30-3-410.

“Alteration”. 30-3-407.

“Cashier’s check”. 30-3-104.

“Certificate of deposit”. 30-3-104.

“Certified check”. 30-3-410.

“Check”. 30-3-104.

“Control”. [section 39].

“Drawee”. 30-3-102.

“Good faith”. 30-3-102.

“Holder in due course”. 30-3-302.

“Instrument”. 30-3-104.

“Notice of dishonor”. 30-3-508.

“Order”. 30-3-102.

“Ordinary care”. 30-3-102.

“Person entitled to enforce”. 30-3-301.

“Presentment”. 30-3-504.

“Promise”. 30-3-102.

“Prove”. 30-3-102.

“Teller’s check”. 30-3-104.

“Unauthorized signature”. 30-3-404.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.”

Section 32. Section 30-4A-105, MCA, is amended to read:

“30-4A-105. Other definitions. (1) In this chapter, the following definitions apply:

(a) “Authorized account” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) “Customer” means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (~~30-1-201(8)~~ 30-1-201(2)(i)).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-4A-209.

"Beneficiary". 30-4A-103.

"Beneficiary's bank". 30-4A-103.

"Executed". 30-4A-301.

"Execution date". 30-4A-301.

"Funds transfer". 30-4A-104.

"Funds-transfer system rule". 30-4A-501.

"Intermediary bank". 30-4A-104.

"Originator". 30-4A-104.

"Originator's bank". 30-4A-104.

"Payment by beneficiary's bank to beneficiary". 30-4A-405.

"Payment by originator to beneficiary". 30-4A-406.

"Payment by sender to receiving bank". 30-4A-403.

"Payment date". 30-4A-401.

"Payment order". 30-4A-103.

"Receiving bank". 30-4A-103.

"Security procedure". 30-4A-201.

"Sender". 30-4A-103.

(3) The following definitions in chapter 4 apply to this chapter:

"Clearinghouse". 30-4-104.

"Item". 30-4-104.

"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 33. Section 30-4A-106, MCA, is amended to read:

"30-4A-106. Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~30-1-201(27)~~ [section 9]. A receiving bank may fix a cutoff time or times on a funds-transfer

business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.”

Section 34. Section 30-5-123, MCA, is amended to read:

“30-5-123. Scope. (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (4), 30-5-122(1)(i) and (1)(j), 30-5-126(4), and 30-5-134(4), and except to the extent prohibited in ~~30-1-102(3) and~~ 30-5-137(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.”

Section 35. Section 30-7-102, MCA, is amended to read:

“30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) “Bailee” means ~~the~~ a person ~~who~~ that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) “Carrier” means a person that issues a bill of lading.

~~(b)~~(c) “Consignee” means the person named in a bill of lading to ~~whom~~ which or to whose order the bill promises delivery.

~~(e)~~(d) “Consignor” means the person named in a bill of lading as the person from ~~whom~~ which the goods have been received for shipment.

~~(d)~~(e) “Delivery order” means a ~~written order~~ record that contains an order to deliver goods directed to a ~~warehouseman~~ warehouse, carrier, or other person ~~who~~ that in the ordinary course of business issues warehouse receipts or bills of lading.

~~(e) "Document" means document of title as defined in 30-1-201(15).~~

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~(f)~~(g) "Goods" means all things which ~~that~~ are treated as movable for the purposes of a contract ~~of~~ for storage or transportation.

~~(g)~~(h) "Issuer" means a bailee ~~who~~ that issues a document of title or, ~~except that in relation to the case of an unaccepted delivery order, it means the person who that orders the possessor of goods to deliver. Issuer~~ The term includes any a person for whom which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, ~~notwithstanding that even if the issuer received no~~ did not receive any goods, ~~or that the goods were misdescribed, or that in any other respect the agent or employee violated his the issuer's instructions.~~

(i) "Person entitled under a document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(j) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(k) "Shipper" means a person that enters into a contract of transportation with a carrier.

(l) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

~~(h)~~(m) ~~"Warehouseman" is~~ "Warehouse" means a person engaged in the business of storing goods for hire.

~~(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:~~

~~"Duly negotiate". 30-7-501.~~

~~"Person entitled under the document". 30-7-403(4).~~

~~(3)~~(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(a) "Contract for sale". 30-2-106.

(b) "Lessee in ordinary course". 30-2A-103.

~~"Overseas". 30-2-323.~~

(c) "Receipt" of goods. 30-2-103.

~~(4)~~(3) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 36. Section 30-7-103, MCA, is amended to read:

"30-7-103. Relation of chapter to treaty, or statute, tariff, classification or regulation. (1) This chapter is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(2) *This chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this chapter. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.*

(3) *This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).*

(4) ~~To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable there is a conflict between the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, and this chapter, the provisions of this chapter are subject thereto governs.~~

Section 37. Section 30-7-104, MCA, is amended to read:

~~"30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.~~ (1) ~~A warehouse receipt, bill of lading or other document of title is negotiable:~~

~~(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or~~

~~(b) where recognized in overseas trade, if it runs to a named person or assigns.~~

(2) ~~Any other~~ A document of title other than one described in subsection (1) is nonnegotiable. A bill of lading in which it is stated that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

(3) *A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.*

Section 38. Reissuance in alternative medium. (1) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(a) the person entitled under the electronic document surrenders control of the document to the issuer; and

(b) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(2) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (1):

(a) the electronic document ceases to have any effect or validity; and

(b) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(a) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(b) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(4) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with subsection (3):

(a) the tangible document ceases to have any effect or validity; and

(b) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Section 39. Control of electronic document of title. (1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(2) A system satisfies subsection (1), and a person is considered to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(a) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subsections (2)(d), (2)(e), and (2)(f), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to which the document was issued; or

(ii) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Section 40. Section 30-7-201, MCA, is amended to read:

“30-7-201. Who Person that may issue a warehouse receipt — storage under government bond. (1) A warehouse receipt may be issued by any ~~warehouseman~~ *warehouse*.

(2) ~~Where~~ *If* goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as is considered to be~~ *is considered to be* a warehouse receipt even ~~though if~~ *if* issued by a person ~~who that~~ *that* is the owner of the goods and is not a ~~warehouseman~~ *warehouse*.”

Section 41. Section 30-7-202, MCA, is amended to read:

“30-7-202. Form of warehouse receipt — essential terms — optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms ~~provides for~~ each of the following, the ~~warehouseman~~ warehouse is liable for damages caused ~~by the omission~~ to a person injured ~~thereby~~ by its omission:

- (a) the location of the warehouse *facility* where the goods are stored;
 - (b) the date of issue of the receipt;
 - (c) the ~~consecutive number~~ *unique identification code* of the receipt;
 - (d) a statement whether the goods received will be delivered to the bearer, to a ~~specified named~~ *named* person, or to a ~~specified named~~ *named* person or ~~his~~ *its* order;
 - (e) the rate of storage and handling charges, ~~except that where~~ *but if* goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;
 - (f) a description of the goods or of the packages containing them;
 - (g) the signature of the ~~warehouseman, which may be made by his~~ *authorized warehouse or its agent*;
 - (h) if the receipt is issued for goods of which the ~~warehouseman is owner~~ *warehouse owns*, either solely, ~~or~~ jointly, or in common with others, the fact of ~~such~~ *that* ownership; and
 - (i) a statement of the amount of advances made and of liabilities incurred for which the ~~warehouseman~~ *warehouse* claims a lien or security interest, ~~(30-7-209). If~~ *but if* the precise amount of ~~such~~ advances made or of ~~such~~ liabilities incurred is, at the time of the issue of the receipt, unknown to the ~~warehouseman~~ *warehouse* or to ~~his~~ *its* agent ~~who issues that issued it the receipt,~~ a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof of the advances or liabilities~~ is sufficient.
- (3) A ~~warehouseman~~ *warehouse* may insert in ~~his~~ *its* receipt any ~~other~~ terms ~~which that~~ are not contrary to the provisions of this code and do not impair ~~his~~ *its* obligation of delivery ~~(under 30-7-403)~~ or ~~his~~ *its* duty of care ~~(under 30-7-204)~~. Any contrary provisions ~~shall be~~ *are* ineffective.”

Section 42. Section 30-7-203, MCA, is amended to read:

“30-7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, ~~relying in either case that relies~~ upon the description ~~therein~~ of the goods ~~in the document~~ may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) the document conspicuously indicates that the issuer does not know whether ~~any all or part or all~~ of the goods in fact were received or conform to the description, ~~as where such as a case in which~~ the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or ~~the like words of similar import, if such the indication be~~ *is* true; or
- (2) the party or purchaser ~~otherwise~~ has notice ~~of the nonreceipt or misdescription.~~

Section 43. Section 30-7-204, MCA, is amended to read:

“30-7-204. Duty of care — contractual limitation of warehouseman’s warehouse’s liability. (1) A ~~warehouseman~~ *warehouse* is liable for damages for loss of or injury to the goods caused by ~~his~~ *its* failure to exercise ~~such~~ care ~~in~~ *with* regard to ~~them as the goods that~~ a reasonably careful ~~man~~ *person* would exercise under ~~like~~ *similar* circumstances. ~~but~~ *However*, unless otherwise agreed, ~~he~~ *the warehouse* is not liable for damages ~~which~~ *that* could not have been avoided by the exercise of ~~such~~ *that* care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, ~~and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be~~ *warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. provided, however, that such* ~~The warehouse’s liability, may on written request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods thereunder, in which covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on such an increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman’s tariff, if any of the goods. No such limitation is effective with respect to the warehouseman’s liability for conversion to his own use.~~

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or ~~tariff~~ *storage agreement.*”

Section 44. Section 30-7-205, MCA, is amended to read:

“30-7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a ~~warehouseman who~~ *warehouse that* is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even ~~though it if the receipt is negotiable and~~ has been duly negotiated.”

Section 45. Section 30-7-206, MCA, is amended to read:

“30-7-206. Termination of storage at warehouseman’s warehouse’s option. (1) A ~~warehouseman~~ *warehouse* may ~~on notifying warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if no a period is not fixed, within a stated period not less than 30 days after the notification warehouse gives notice. If the goods are not removed before the date specified in the notification notice, the warehouseman warehouse may sell them in accordance with the provisions of the section on enforcement of a warehouseman’s lien (pursuant to 30-7-210).~~

(2) If a ~~warehouseman~~ *warehouse* in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of ~~his~~ *its* lien within the time prescribed in subsection (1) ~~and 30-7-210, for notification, advertisement and sale; the warehouseman warehouse may specify in the notification notice given under subsection (1) any reasonable shorter time for removal of the goods and, in case if the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.~~

(3) If, as a result of a quality or condition of the goods of which the ~~warehouseman had no~~ *warehouse did not have* notice at the time of deposit, the

goods are a hazard to other property, ~~or to the warehouse facilities, or to other persons, the warehouseman~~ warehouse may sell the goods at public or private sale without advertisement *or posting* on reasonable notification to all persons known to claim an interest in the goods. If the ~~warehouseman~~ warehouse, after a reasonable effort, is unable to sell the goods, ~~he it~~ may dispose of them in any lawful manner and ~~shall does not~~ incur ~~no~~ liability by reason of ~~such that~~ disposition.

(4) ~~The warehouseman must~~ A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) ~~The warehouseman~~ A warehouse may satisfy ~~his~~ its lien from the proceeds of any sale or disposition under this section but ~~must~~ shall hold the balance for delivery on the demand of any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods."

Section 46. Section 30-7-207, MCA, is amended to read:

"30-7-207. Goods must be kept separate — fungible goods. (1) Unless the warehouse receipt otherwise provides, a ~~warehouseman must~~ warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. ~~except that~~ However, different lots of fungible goods may be commingled.

(2) ~~Fungible~~ If different lots of fungible goods ~~so are~~ commingled, ~~are the goods owned in common by the persons entitled thereto and the warehouseman~~ warehouse is severally liable to each owner for that owner's share. ~~Where~~ If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts ~~which the warehouseman~~ warehouse has issued against it, the persons entitled include all holders to ~~whom~~ which overissued receipts have been duly negotiated."

Section 47. Section 30-7-208, MCA, is amended to read:

"30-7-208. Altered warehouse receipts. ~~Where~~ If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the ~~want~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor."

Section 48. Section 30-7-209, MCA, is amended to read:

"30-7-209. Lien of ~~warehouseman~~ warehouse. (1) A ~~warehouseman~~ warehouse has a lien against the bailor on the goods covered by a warehouse receipt *or storage agreement* or on the proceeds thereof in ~~his~~ its possession for charges for storage or transportation, (including demurrage and terminal charges), insurance, labor, or *other* charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the receipt *or storage agreement* that a lien is claimed for charges and expenses in relation to other goods, the ~~warehouseman~~ warehouse also has a lien against ~~him~~ for ~~such~~ the goods covered by the warehouse receipt *or storage agreement* or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the ~~warehouseman~~ warehouse. ~~But~~ However, as against a person to ~~whom~~ which a negotiable warehouse receipt is duly negotiated, a

~~warehouseman's~~ *warehouse's* lien is limited to charges in an amount or at a rate specified ~~on~~ *in* the *warehouse* receipt or, if no charges are so specified, ~~then~~ to a reasonable charge for storage of the *specific* goods covered by the receipt subsequent to the date of the receipt.

(2) The ~~warehouseman~~ *warehouse* may also reserve a security interest *under chapter 9A* against the bailor for ~~a~~ *the* maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. ~~Such a~~ *A* security interest is governed by the ~~Chapter on Secured Transactions (Chapter~~ *chapter 9A)*.

(3) A ~~warehouseman's~~ *warehouse's* lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person ~~who~~ *that* so entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ *the bailor* to a good faith purchaser for value would have been valid. ~~but~~ *However, the lien or security interest is not effective against a person as to whom the document confers no right in the goods covered by it under 30-7-503 that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:*

(a) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under 30-7-403; or with power of disposition under 30-2-403, 30-2A-304(2), 30-2A-305(2), or 30-9A-320 or other statute or rule of law; or

(b) acquiesce in the procurement by the bailor or its nominee of any document.

(4) *A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.*

~~(4)(5) A warehouseman~~ *warehouse* loses ~~his~~ *its* lien on any goods ~~which he~~ *that it* voluntarily delivers or ~~which he~~ *unjustifiably refuses to deliver."*

Section 49. Section 30-7-210, MCA, is amended to read:

"30-7-210. Enforcement of ~~warehouseman's~~ warehouse's lien. (1) Except as provided in subsection (2), a ~~warehouseman's~~ *warehouse's* lien may be enforced by public or private sale of the goods, in block or in ~~parcels~~ *packages*, at any time or place and on any terms ~~which that~~ *that* are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the ~~warehouseman~~ *warehouse* is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the warehouseman either~~ *The warehouse has sold in a commercially reasonable manner if the warehouse* sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ *or if he* sells at the price current in ~~such that~~ *that* market at the time of ~~his~~ *the* sale, or ~~if he~~ *if he* has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, ~~he has sold in a commercially reasonable manner.~~ A sale of more goods than apparently necessary to be offered to ~~insure~~ *ensure* satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) A ~~warehouseman's~~ *warehouse's* lien on goods, other than goods stored by a merchant in the course of ~~his~~ *its* business, may be enforced only ~~as follows if the following requirements are satisfied:~~

(a) All persons known to claim an interest in the goods must be notified.

~~(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.~~

~~(c)~~(b) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~(d)~~(c) The sale must conform to the terms of the notification.

~~(e)~~(d) The sale must be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)~~(e) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under in complying with~~ this section. In that event, the goods ~~must~~ *may* not be sold, but must be retained by the ~~warehouseman~~ *warehouse* subject to the terms of the receipt and this chapter.

(4) ~~The warehouseman~~ *A warehouse* may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a ~~warehouseman's~~ *warehouse's* lien takes the goods free of any rights of persons against whom the lien was valid, despite ~~noncompliance by the warehouseman~~ *warehouse's noncompliance with the requirements of* this section.

(6) ~~The warehouseman~~ *A warehouse* may satisfy ~~his~~ *its* lien from the proceeds of any sale pursuant to this section but ~~must~~ *shall* hold the balance, if any, for delivery on demand to any person to ~~whom he~~ *which the warehouse* would have been bound to deliver the goods.

(7) The rights provided by this section ~~shall be~~ *are* in addition to all other rights allowed by law to a creditor against ~~his~~ *a* debtor.

~~(8) Where~~ *If* a lien is on goods stored by a merchant in the course of ~~his~~ *its* business, the lien may be enforced in accordance with either subsection (1) or (2).

(9) ~~The warehouseman~~ *A warehouse* is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

Section 50. Section 30-7-301, MCA, is amended to read:

"30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling. (1) A

consignee of a nonnegotiable bill ~~who~~ *which* has given value in good faith, or a holder to ~~whom~~ *which* a negotiable bill has been duly negotiated, relying in either case upon the description therein of the goods *in the bill*; or upon the date therein shown *in the bill*, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document *of title* indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, *such as where in a case in which* the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count", or ~~the like words of similar import~~, if ~~such that~~ *that* indication ~~be~~ *is* true.

(2) ~~When~~ *If* goods are loaded by ~~an~~ *the* issuer ~~who is a common carrier of the bill of lading~~, the issuer ~~must~~ *shall* count the packages of goods if ~~package freight shipped in packages~~ and ascertain the kind and quantity if ~~shipped in bulk freight~~. ~~In and words such as~~ "shipper's weight, load and count" or ~~other words of similar import~~ indicating that the description was made by the shipper are ineffective except as to ~~freight goods~~ *goods* concealed by packages.

(3) ~~When~~ *If* bulk ~~freight is~~ *goods are* loaded by a shipper ~~who that~~ makes available to the issuer *of the bill of lading* adequate facilities for weighing ~~such freight those goods~~, ~~an~~ *the* issuer ~~who is a common carrier must~~ *shall* ascertain the kind and quantity within a reasonable time after receiving the ~~written shipper's request of the shipper in a record~~ to do so. In ~~such cases that case~~, "shipper's weight" or other words of ~~like purport similar import~~ are ineffective.

(4) The issuer, ~~may by inserting~~ *including* in the bill of lading the words "shipper's weight, load and count", or other words of ~~like purport similar import~~, *may* indicate that the goods were loaded by the shipper; and if ~~such that~~ statement ~~be is~~ true, the issuer ~~shall is not be~~ liable for damages caused by the improper loading. ~~But their~~ *However*, omission of ~~such words~~ does not imply liability for ~~such damages caused by improper loading~~.

(5) ~~The~~ *A* shipper ~~shall be deemed to have guaranteed guarantees~~ to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by ~~him; the shipper~~, and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such those~~ particulars. ~~The~~ *This* right of the issuer to ~~such that~~ indemnity ~~shall in no way does not limit his its~~ responsibility ~~and~~ or liability under the contract of carriage to any person other than the shipper."

Section 51. Section 30-7-302, MCA, is amended to read:

"30-7-302. Through bills of lading and similar documents of title. (1) The issuer of a through bill of lading or other document *of title* embodying an undertaking to be performed in part by persons acting as its agents or by ~~connecting carriers~~ *a performing carrier* is liable to ~~anyone~~ *any person* entitled to recover on the document for any breach by ~~such the other persons person or by a connecting the performing carrier~~ of its obligation under the document. ~~but~~ *However*, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability *for breach by the other person or the performing carrier* may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the

issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of ~~such a~~ through bill of lading or other document ~~shall be of title described in subsection (1) is~~ entitled to recover from the ~~connecting performing~~ carrier, or ~~such~~ other person in possession of the goods when the breach of the obligation under the document occurred;

(a) the amount it may be required to pay to ~~anyone~~ *any person* entitled to recover on the document ~~therefor for the breach,~~ as may be evidenced by any receipt, judgment, or transcript ~~thereof,~~ of judgment; and

(b) the amount of any expense reasonably incurred by ~~it~~ *the issuer* in defending any action ~~brought~~ *commenced* by ~~anyone~~ *any person* entitled to recover on the document ~~therefor for the breach.~~"

Section 52. Section 30-7-303, MCA, is amended to read:

"30-7-303. Diversion — reconsignment — change of instructions. (1) Unless the bill of lading otherwise provides, ~~the~~ *a* carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, *without liability for misdelivery,* on instructions from:

- (a) the holder of a negotiable bill; or
- (b) the consignor on a nonnegotiable bill ~~notwithstanding even if the consignee has given~~ *contrary instructions from the consignee;* or
- (c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; ~~or~~
- ~~(d)~~ *(e) the consignee on a nonnegotiable bill, if he the consignee is entitled as against the consignor to dispose of them the goods.*

(2) Unless ~~such~~ *instructions described in subsection (1) are noted on* included in a negotiable bill of lading, a person to ~~whom~~ *which* the bill is duly negotiated ~~can~~ *may* hold the bailee according to the original terms."

Section 53. Section 30-7-304, MCA, is amended to read:

"30-7-304. Bills Tangible bills of lading in a set. (1) Except ~~where~~ *as* customary in ~~overseas~~ *international* transportation, a bill of lading ~~must~~ *may* not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) ~~Where~~ *If a tangible* bill of lading is lawfully ~~drawn~~ *issued* in a set of parts, each of which ~~is numbered~~ *contains an identification code* and *is* expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) ~~Where~~ *If a tangible negotiable* bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~whom~~ *which* the first due negotiation is made prevails as to both the document of title and the goods even ~~though~~ *if* any later holder may have

received the goods from the carrier in good faith and discharged the carrier's obligation by ~~surrender of his~~ *surrendering its* part.

(4) ~~Any~~ A person ~~who~~ *that* negotiates or transfers a single part of a *tangible* bill of lading ~~drawn~~ *issued* in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with ~~Part~~ *part* 4 of this chapter against the first presented part of a *tangible* bill of lading lawfully ~~drawn~~ *issued* in a set. ~~Such delivery~~ *Delivery in this manner* discharges the bailee's obligation on the whole bill."

Section 54. Section 30-7-305, MCA, is amended to read:

"30-7-305. Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, ~~may~~ at the request of the consignor, *may* procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of ~~anyone~~ *any person* entitled as against ~~the~~ *a* carrier to control the goods while in transit and on surrender of *possession or control* of any outstanding bill of lading or other receipt covering ~~such~~ *the* goods, the issuer, *subject to [section 38],* may procure a substitute bill to be issued at any place designated in the request."

Section 55. Section 30-7-307, MCA, is amended to read:

"30-7-307. Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading *or on the proceeds thereof in its possession* for charges ~~subsequent to~~ *after* the date of ~~its~~ *the carrier's* receipt of the goods for storage or transportation (including demurrage and terminal charges), and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~But~~ *However,* against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated, ~~then to~~ *a reasonable charge.*

(2) A lien for charges and expenses under subsection (1) on goods ~~which~~ *that* the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to ~~such~~ *those* charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person ~~who~~ *that* permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~such~~ authority.

(3) A carrier loses ~~his~~ *its* lien on any goods ~~which he~~ *that it* voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver."

Section 56. Section 30-7-308, MCA, is amended to read:

"30-7-308. Enforcement of carrier's lien. (1) A carrier's lien *on goods* may be enforced by public or private sale of the goods, in ~~bulk~~ *bulk* or in ~~parcels~~ *packages*, at any time or place and on any terms ~~which~~ *that* are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ *The* notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If~~ *The* carrier ~~either sells the~~ *has sold* goods in a commercially reasonable

manner if the carrier sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such that market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ *in complying with* this section. In that event, the goods ~~must~~ *may* not be sold, but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(3) ~~The~~ A carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against ~~whom~~ *which* the lien was valid, despite *the carrier's* noncompliance ~~by the carrier~~ with the requirements of this section.

(5) ~~The~~ A carrier may satisfy ~~his~~ *its* lien from the proceeds of any sale pursuant to this section but ~~must~~ *shall* hold the balance, if any, for delivery on demand to any person to ~~whom~~ *which* the carrier would have been bound to deliver the goods.

(6) The rights provided by this section ~~shall be~~ *are* in addition to all other rights allowed by law to a creditor against ~~his~~ *a* debtor.

(7) A carrier's lien may be enforced ~~in accordance with~~ *pursuant to* either subsection (1) or the procedure set forth in ~~subsection (2) of 30-7-210~~ *30-7-210(2)*.

(8) ~~The~~ A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

Section 57. Section 30-7-309, MCA, is amended to read:

"30-7-309. Duty of care — contractual limitation of carrier's liability. (1) A carrier ~~who~~ *that* issues a bill of lading, whether negotiable or nonnegotiable, ~~must~~ *shall* exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ *person* would exercise under ~~like~~ *similar* circumstances. This subsection does not ~~repeal or change~~ *affect* any law, statute, regulation, or rule of law ~~which~~ *that* imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a ~~provision~~ *term in the bill of lading or in a transportation agreement* that the carrier's liability ~~shall~~ *may* not exceed a value stated in the ~~document bill or transportation agreement~~ if the carrier's rates are dependent upon value and the consignor ~~by the carrier's tariff~~ is afforded an opportunity to declare a higher value ~~or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise~~ *and the consignor is advised of such the opportunity; but no* However, such a limitation is *not* effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~ *commencing* actions based on the shipment may be included in a bill of lading or ~~tariff transportation agreement~~."

Section 58. Section 30-7-401, MCA, is amended to read:

“30-7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title ~~regardless of the fact that even if:~~

(a) the document ~~may~~ does not comply with the requirements of this chapter or of any other ~~law~~ statute, rule, or regulation regarding its issue, form or content; ~~or~~

(b) the issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ its business; ~~or~~

(c) the goods covered by the document were owned by the bailee ~~at the time when~~ the document was issued; or

(d) the person issuing the document ~~does not come within the definition of warehouseman if it is not a warehouse but the document~~ purports to be a warehouse receipt.”

Section 59. Section 30-7-402, MCA, is amended to read:

“30-7-402. Duplicate receipt or bill — overissue. ~~Neither a~~ A duplicate ~~nor or~~ any other document of title purporting to cover goods already represented by an outstanding document of the same issuer ~~confers~~ does not confer any right in the goods, except as provided in the case of *tangible bills of lading* in a set of parts, overissue of documents for fungible goods, ~~and~~ substitutes for lost, stolen, or destroyed documents, *or substitute documents issued pursuant to [section 38].* ~~But the~~ The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate document ~~as such by a conspicuous notation on its face.~~”

Section 60. Section 30-7-403, MCA, is amended to read:

“30-7-403. Obligation of ~~warehouseman~~ warehouse or carrier to deliver — excuse. (1) ~~The~~ A bailee ~~must~~ shall deliver the goods to a person entitled under ~~the~~ a document of title ~~who~~ if the person complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on ~~warehouseman's~~ a warehouse's lawful termination of storage;

(d) the exercise by a seller of ~~his~~ its right to stop delivery pursuant to ~~the provisions of the Chapter on Sales (30-2-705) or by a lessor of its right to stop delivery pursuant to 30-2A-526;~~

(e) a diversion, reconsignment, or other disposition pursuant to ~~the provisions of this chapter (30-7-303) or tariff regulating such right;~~

(f) release, satisfaction, or any other fact affording a personal defense against the claimant; *or*

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title ~~must~~ shall satisfy the bailee's lien ~~where~~ if the bailee so requests or ~~where~~ the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless ~~the~~ a person claiming the goods is one against ~~whom~~ which the document ~~confers~~ no of title does not confer a right under 30-7-503(1);:

(a) ~~he must~~ the person claiming under a document shall surrender ~~for cancellation or notation of partial deliveries possession or control of any outstanding negotiable document covering the goods; for cancellation or indication of partial deliveries; and~~

(b) the bailee ~~must~~ shall cancel the document or conspicuously ~~note indicate in the document the partial delivery thereon~~ or be liable to any person to ~~whom~~ which the document is duly negotiated.

(4) ~~“Person entitled under the document” means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.”~~

Section 61. Section 30-7-404, MCA, is amended to read:

“30-7-404. No liability for good faith delivery pursuant to receipt or bill document of title. A bailee ~~who~~ that in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of ~~them~~ the goods according to the terms of the document of title or pursuant to this chapter is not liable therefor. ~~This rule applies for the goods even though if:~~

(1) the person from whom ~~he~~ the bailee received the goods ~~had no~~ did not have authority to procure the document or to dispose of the goods; ~~and or~~

(2) ~~even though~~ the person to ~~whom he~~ which the bailee delivered the goods ~~had no~~ did not have authority to receive ~~them~~ the goods.”

Section 62. Section 30-7-501, MCA, is amended to read:

“30-7-501. Form of negotiation and requirements of “due negotiation”. (1) ~~A~~ The following rules apply to a tangible negotiable document of title:

(a) ~~If the document’s original terms running~~ run to the order of a named person, the document is negotiated by ~~his~~ the named person’s endorsement and delivery. After ~~his~~ the named person’s endorsement in blank or to bearer, any person ~~can~~ may negotiate ~~it~~ the document by delivery alone.

(2)(b) ~~(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs~~ run to bearer, it is negotiated by delivery alone;

(b)(c) ~~when a document running~~ If the document’s original terms run to the order of a named person and it is delivered to ~~him~~ the named person, the effect is the same as if the document had been negotiated.

(3)(d) ~~Negotiation of a negotiable the document of title after it has been endorsed to a specified named person requires endorsement by the special endorsee named person as well as delivery.~~

(4)(e) A negotiable document of title is “duly negotiated” ~~when if~~ it is negotiated in the manner stated in this section ~~subsection (1)(e)~~ to a holder ~~who~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(2) The following rules apply to a negotiable electronic document of title:

(a) If the document’s original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.

(b) *If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.*

(c) *A document is duly negotiated if it is negotiated in the manner stated in this subsection (2) to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.*

(5)(d) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(6)(e) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~nor~~ or constitute notice to a purchaser thereof of the bill of any interest of ~~such~~ that person in the goods."

Section 63. Section 30-7-502, MCA, is amended to read:

"30-7-502. Rights acquired by due negotiation. (1) Subject to ~~the following section and to the provisions of~~ 30-7-205 and 30-7-503, on fungible goods, a holder to ~~whom~~ *which* a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ *the issuer* except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee's obligation accrues only upon *the bailee's* acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to ~~the following section~~ 30-7-503, title and rights ~~so~~ acquired by *due negotiation* are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~such~~ *the* goods by the bailee; and are not impaired even ~~though~~ *if*:

(a) the *due* negotiation or any prior *due* negotiation constituted a breach of duty;

(b) ~~or even though~~ any person has been deprived of possession of ~~the~~ *a* negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

(c) ~~even though~~ a previous sale or other transfer of the goods or document has been made to a third person."

Section 64. Section 30-7-503, MCA, is amended to read:

"30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person ~~who~~ *that* before issuance of the document had a legal interest or a perfected security interest in ~~them~~ *the goods* and ~~who neither~~ *that did not*:

(a) ~~delivered or entrusted them~~ *deliver or entrust the goods* or any document of title covering ~~them~~ *the goods* to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell; ~~or~~ with power to obtain delivery under ~~this chapter (30-7-403); or with power of disposition under this code (30-2-403, 30-2A-304(2), 30-2A-305(2), and or 30-9A-320)~~ or other statute or rule of law; ~~nor or~~

(b) ~~acquiesced~~ *acquiesce* in the procurement by the bailor or the bailor's nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ *any person* to ~~whom~~ *which* a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ *That* title may be defeated under ~~the next section 30-7-504~~ to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ *any person* to ~~whom~~ *which* a bill issued by the freight forwarder is duly negotiated; ~~but~~ *However*, delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver."

Section 65. Section 30-7-504, MCA, is amended to read:

"30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery. (1) A transferee of a document *of title*, whether negotiable or nonnegotiable, to ~~whom~~ *which* the document has been delivered but not duly negotiated, acquires the title and rights ~~which his~~ *that its* transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document *of title*, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402 *or 30-2A-308*; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~his~~ *the buyer's* rights; or

(c) as against the bailee, by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if ~~they~~ *the goods* have been delivered to a buyer in ordinary course of business *or a lessee in ordinary course of business* and in any event defeats the consignee's rights against the bailee.

(4) Delivery *of goods* pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705 *or a lessor under 30-2A-526*, ~~and~~ subject to the ~~requirement~~ *requirements* of due notification ~~there provided in those sections~~. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense."

Section 66. Section 30-7-506, MCA, is amended to read:

"30-7-506. Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have ~~his~~ *its* transferor supply any necessary

endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied.”

Section 67. Section 30-7-507, MCA, is amended to read:

“30-7-507. Warranties on negotiation or transfer of receipt or bill delivery of document of title. ~~Where~~ If a person negotiates or transfers delivers a document of title for value, otherwise than as a mere intermediary under ~~the next following section 30-7-508, then~~ unless otherwise agreed, ~~he the~~ transferor warrants to ~~his~~ its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

- (a) ~~that~~ the document is genuine; and
- (b) ~~that he has no the transferor does not have~~ knowledge of any fact ~~which~~ that would impair ~~its the document's~~ validity or worth; and
- (c) ~~that his the~~ negotiation or transfer delivery is rightful and fully effective with respect to the title to the document and the goods it represents.”

Section 68. Section 30-7-508, MCA, is amended to read:

“30-7-508. Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~such the~~ delivery of the documents only its own good faith and authority. ~~This rule applies even though the if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.~~”

Section 69. Section 30-7-509, MCA, is amended to read:

“30-7-509. Receipt or bill—when adequate Adequate compliance with commercial contract. ~~The question whether~~ Whether a document is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a credit is governed by the Chapters on Sales (Chapter chapter 2), 2A, and on Letters of Credit (Chapter or 5).”

Section 70. Section 30-7-601, MCA, is amended to read:

“30-7-601. Lost and missing documents. (1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~such the~~ order. If the document was negotiable, ~~a court may not order delivery of the goods or issuance of a substitute document without the claimant must post claimant's posting security approved by the court to indemnify unless it finds that any person who that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss.~~ If the document was not negotiable nonnegotiable, ~~such the court may require security may be required at the discretion of the court.~~ The court may also in its discretion order payment of the bailee's reasonable costs and ~~counsel attorney's~~ fees in any action under this subsection.

(2) A bailee ~~who that~~ without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby, ~~and if~~ If the delivery is not in good faith, ~~the bailee is becomes~~ liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ~~who which~~ files a notice of claim within 1 year after the delivery.”

Section 71. Section 30-7-602, MCA, is amended to read:

“30-7-602. Attachment of goods covered by a negotiable document of title. ~~Except where the~~ *Unless a document of title* was originally issued upon delivery of the goods by a person ~~who had no~~ *that did not have* power to dispose of them, ~~no a lien attaches does not attach~~ by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless *possession or control of the document* ~~he is~~ *is* first surrendered to the bailee or ~~its~~ *the document's* negotiation is enjoined; ~~and the~~ *The* bailee ~~shall may~~ not be compelled to deliver the goods pursuant to process until *possession or control of the document is surrendered to him the bailee or impounded by to the court. One who purchases* *A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.”*

Section 72. Section 30-7-603, MCA, is amended to read:

“30-7-603. Conflicting claims — interpleader. If more than one person claims title ~~to~~ or possession of the goods, the bailee is excused from delivery until ~~he the bailee has had~~ a reasonable time to ascertain the validity of the adverse claims or to ~~bring commence an action to compel all claimants to interplead and may compel such~~ for interpleader; *The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.”*

Section 73. Section 30-8-113, MCA, is amended to read:

“30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets. (1) A share or similar equity interest issued by a corporation, business trust, joint-stock company, or similar entity is a security.

(2) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in 30-9A-102, is not a security or a financial asset.

(7) *A document of title, as defined in 30-1-201(2)(q), is not a financial asset unless 30-8-112(1)(i)(C) applies.”*

Section 74. Section 30-9A-102, MCA, is amended to read:

“30-9A-102. Definitions and index of definitions. (1) As used in this chapter, the following definitions apply:

(a) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to be incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivable.

(iii) The term does not include:

(A) a right to payment evidenced by chattel paper or an instrument;

(B) a commercial tort claim;

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right; or

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) “Accounting”, except as used in “accounting for”, means a record:

(i) authenticated by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) “Agricultural lien” means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor’s farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means to:

(i) sign; or

(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

(A) identify the authenticating party; and

(B) adopt, accept, or establish the authenticity of a record or term.

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection (1)(k)(i), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

(ii) (A) The term does not include:

(I) charters or other contracts involving the use or hire of a vessel; or

(II) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(B) If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (i) proceeds to which a security interest attaches under 30-9A-315;
 - (ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (iii) goods that are the subject of a consignment.
- (m) "Commercial tort claim" means a claim arising in tort if:
- (i) the claimant is an organization; or
 - (ii) the claimant is an individual and the claim:
 - (A) arose in the course of the claimant's business or profession; and
 - (B) does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

- (i) is registered as a futures commission merchant under federal commodities law; or
- (ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

- (i) to send a written or other tangible record;
- (ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (i) the merchant:
 - (A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9A-519(1).

(kk) "Filing office" means an office designated in 30-9A-501 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9A-526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9A-502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9A-203(4) by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor", except as used in 30-9A-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9A-203(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds", except as used in 30-9A-609(2), means the following property:

(i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

- (i) evidences a promise to pay a monetary obligation;
- (ii) does not evidence an order to pay; and
- (iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9A-620 through 30-9A-622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

- (i) bonds, debentures, certificates of participation, or similar debt securities are issued;
- (ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
- (iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of one state or the United States and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

- (i) the obligor's obligation is secondary; or
- (ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

- (i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (ii) a person that holds an agricultural lien;
- (iii) a consignor;
- (iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

(i) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) cause the record or notification to be received within the time that it would have been received if properly sent under subsection (1)(vvv)(i).

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(zzz) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant" 30-5-122.

"Beneficiary" 30-5-122.

"Broker" 30-8-112.

"Certificated security" 30-8-112.

“Check” 30-3-104.
“Clearing corporation” 30-8-112.
“Contract for sale” 30-2-106.
“Control” (with respect to a document of title) [section 39].
“Customer” 30-4-104.
“Entitlement holder” 30-8-112.
“Financial asset” 30-8-112.
“Holder in due course” 30-3-302.
“Issuer” (with respect to a letter of credit or letter-of-credit right) 30-5-122.
“Issuer” (with respect to a security) 30-8-211.
“Lease” 30-2A-103.
“Lease agreement” 30-2A-103.
“Lease contract” 30-2A-103.
“Leasehold interest” 30-2A-103.
“Lessee” 30-2A-103.
“Lessee in ordinary course of business” 30-2A-103.
“Lessor” 30-2A-103.
“Lessor’s residual interest” 30-2A-103.
“Letter of credit” 30-5-122.
“Merchant” 30-2-104.
“Negotiable instrument” 30-3-104.
“Nominated person” 30-5-122.
“Note” 30-3-104.
“Proceeds of a letter of credit” 30-5-134.
“Prove” 30-3-102.
“Sale” 30-2-106.
“Securities account” 30-8-501.
“Securities intermediary” 30-8-112.
“Security” 30-8-112.
“Security certificate” 30-8-112.
“Security entitlement” 30-8-112.
“Uncertificated security” 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.”

Section 75. Section 30-9A-203, MCA, is amended to read:

“30-9A-203. Attachment and enforcement of security interest — proceeds — supporting obligations — formal requisites. (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (a) value has been given;
- (b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (c) one of the following conditions is met:
 - (i) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (ii) the collateral is not a certificated security and is in the possession of the secured party under 30-9A-313 pursuant to the debtor's security agreement;
 - (iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement; or
 - (iv) the collateral is a deposit account, electronic chattel paper, investment property, ~~or~~ a letter-of-credit right, *or electronic document* and the secured party has control under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, *or [section 39]* pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, 30-5-118 on the security interest of a letter-of-credit issuer or nominated person, 30-9A-110 on a security interest arising under chapter 2 or 2A, and 30-9A-206 on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

- (a) the security agreement becomes effective to create a security interest in the person's property; or
- (b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (b) another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 30-9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.”

Section 76. Section 30-9A-207, MCA, is amended to read:

“30-9A-207. Rights and duties of secured party having possession or control of collateral. (1) Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party’s possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, *or [section 39]*:

(a) may hold as additional security any proceeds, except money or funds, received from the collateral;

(b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(c) may create a security interest in the collateral.

(4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(a) subsection (1) does not apply unless the secured party is entitled by agreement:

(i) to charge back uncollected collateral; or

(ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(b) subsections (2) and (3) do not apply.”

Section 77. Section 30-9A-208, MCA, is amended to read:

“30-9A-208. Additional duties of secured party having control of collateral. (1) This section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor:

(a) a secured party having control of a deposit account under 30-9A-104(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(b) a secured party having control of a deposit account under 30-9A-104(1)(c) shall:

(i) pay the debtor the balance on deposit in the deposit account; or

(ii) transfer the balance on deposit into a deposit account in the debtor's name;

(c) a secured party, other than a buyer, having control of electronic chattel paper under 30-9A-105 shall:

(i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(d) a secured party having control of investment property under 30-8-116(4)(b) or 30-9A-106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(e) a secured party having control of a letter-of-credit right under 30-9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; *and*

(f) a secured party having control of an electronic document shall:

(i) give control of the electronic document to the debtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an

identified assignee of the authoritative copy without the consent of the secured party.”

Section 78. Section 30-9A-301, MCA, is amended to read:

“30-9A-301. Law governing perfection and priority of security interests. Except as otherwise provided in 30-9A-303 through 30-9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4), while *tangible* negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(a) perfection of a security interest in the goods by filing a fixture filing;

(b) perfection of a security interest in timber to be cut; and

(c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.”

Section 79. Section 30-9A-310, MCA, is amended to read:

“30-9A-310. When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply. (1) Except as otherwise provided in 30-9A-312(2) or subsection (2) of this section, a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect a security interest:

(a) that is perfected under 30-9A-308(4), (5), (6), or (7);

(b) that is perfected under 30-9A-309 when it attaches;

(c) in property subject to a statute, regulation, or treaty described in 30-9A-311(1);

(d) in goods in possession of a bailee that is perfected under 30-9A-312(4)(a) or (4)(b);

(e) in certificated securities, documents, goods, or instruments that is perfected without filing or possession under 30-9A-312(5), (6), or (7);

(f) in collateral in the secured party's possession under 30-9A-313;

(g) in a certificated security that is perfected by delivery of the security certificate to the secured party under 30-9A-313;

(h) in a deposit account, electronic chattel paper, *electronic document*, investment property, or letter-of-credit right that is perfected by control under 30-9A-314;

(i) in proceeds which is perfected under 30-9A-315; or

(j) that is perfected under 30-9A-316.

(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.”

Section 80. Section 30-9A-312, MCA, is amended to read:

“30-9A-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(2) Except as otherwise provided in 30-9A-315(3) and (4) for proceeds:

(a) a security interest in a deposit account may be perfected only by control under 30-9A-314;

(b) a security interest in a letter-of-credit right may be perfected only by control under 30-9A-314, except as otherwise provided in 30-9A-308(4); and

(c) a security interest in money may be perfected only by the secured party’s taking possession under 30-9A-313.

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(a) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee’s receipt of notification of the secured party’s interest; or

(c) filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(6) A perfected security interest in a negotiable document or goods in possession *or control* of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) ultimate sale or exchange; or

(b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (a) ultimate sale or exchange; or
- (b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter.”

Section 81. Section 30-9A-313, MCA, is amended to read:

“30-9A-313. When possession by or delivery to secured party perfects security interest without filing. (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in *tangible* negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 30-8-331.

(2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 30-9A-316(4).

(3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor’s business when:

(a) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party’s benefit; or

(b) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party’s benefit.

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 30-8-331 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party’s benefit.

(7) If a person acknowledges that it holds possession for the secured party’s benefit:

(a) the acknowledgment is effective under 30-8-331(1) or subsection (3) of this section, even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a

lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- (a) to hold possession of the collateral for the secured party's benefit; or
- (b) to redeliver the collateral to the secured party.

(9) A secured party does not relinquish possession even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides."

Section 82. Section 30-9A-314, MCA, is amended to read:

"30-9A-314. Perfection by control. (1) A security interest in investment property, a deposit account, a letter-of-credit right, or electronic chattel paper may be perfected by control of the collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, *or [section 39]*.

(2) A security interest in a deposit account, electronic chattel paper, ~~or~~ a letter-of-credit right, *or electronic document* is perfected by control under 30-9A-104, 30-9A-105, ~~or~~ 30-9A-107, *or [section 39]* when the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under 30-9A-106 from the time the secured party obtains control and remains perfected by control until:

- (a) the secured party does not have control; and
- (b) one of the following occurs:
 - (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder."

Section 83. Section 30-9A-317, MCA, is amended to read:

"30-9A-317. Interests that take priority over or take free of security interest or agricultural lien. (1) A security interest or agricultural lien is subordinate to the rights of:

- (a) a person entitled to priority under 30-9A-322; and
- (b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the time:
 - (i) the security interest or agricultural lien is perfected; or
 - (ii) one of the conditions specified in 30-9A-203(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, *tangible* documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, *electronic documents*, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9A-320 and 30-9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.”

Section 84. Section 30-9A-338, MCA, is amended to read:

“30-9A-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 30-9A-516(2)(e) that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of *tangible* chattel paper, *tangible* documents, goods, instruments, or a security certificate, receives delivery of the collateral.”

Section 85. Section 30-9A-601, MCA, is amended to read:

“30-9A-601. Rights after default — judicial enforcement — consignors or buyers of accounts, chattel paper, payment intangibles, or promissory notes. (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in 30-9A-602, those provided by agreement of the parties. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, or [section 39] has the rights and duties provided in 30-9A-207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in 30-9A-605 and subsection (7) of this section, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest or agricultural lien in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(7) Except as otherwise provided in 30-9A-607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes."

Section 86. Section 30-18-103, MCA, is amended to read:

"30-18-103. Scope. (1) Except as otherwise provided in subsection (2), this part applies to electronic records and electronic signatures relating to a transaction.

(2) This part does not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and

(b) Title 30, chapter 1, other than 30-1-107 ~~and 30-1-206~~, and chapters 3 through 9A.

(3) This part applies to an electronic record or electronic signature otherwise excluded from the application of this part under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to this part is also subject to other applicable substantive law."

Section 87. Section 30-18-115, MCA, is amended to read:

"30-18-115. Transferable records. (1) In this section, "transferable record" means an electronic record that:

(a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that:

(a) a single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

- (b) the authoritative copy identifies the person asserting control as:
 - (i) the person to which the transferable record was issued; or
 - (ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;
 - (c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
 - (d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
 - (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
 - (f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.
- (4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in ~~30-1-201(20)~~ *30-1-201(2)(v)*, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 30, chapters 1 through 9A, including, if the applicable statutory requirements under 30-3-302(1), 30-7-501, or 30-9A-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.
- (5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9A.
- (6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record."

Section 88. Section 45-6-315, MCA, is amended to read:

"45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (~~30-1-201(37)~~ *30-1-201(2)(jj)*).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301."

Section 89. Section 71-3-125, MCA, is amended to read:

“71-3-125. Filing of agricultural lien statements. (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in ~~30-1-201(9)~~ *30-1-201(2)(j)*, buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

- (2) A statement of an agricultural lien is sufficient if it:
 - (a) gives the names and addresses of the debtor and lienor;
 - (b) describes the type of lien and its statutory authority;
 - (c) describes the collateral;
 - (d) contains the notation by the secretary of state of the date of filing and filing number;
 - (e) is signed by the lienor;
 - (f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.
 - (g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;
 - (h) states the amount remaining unpaid;
 - (i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;
 - (j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;
 - (k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;
 - (l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and
 - (m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

- (a) record the agricultural lien statement on the centralized computer system as set forth in ~~30-9A-502~~ *30-9A-501*; and
- (b) establish fees for such recordings as set forth in *30-9A-525*.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder.”

Section 90. Repealer. Sections 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, and 30-7-706, MCA, are repealed.

Section 91. Codification instructions. (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 30, chapter 1, and the provisions of Title 30, chapter 1, apply to [sections 9 through 13].

(2) [Sections 38 and 39] are intended to be codified as an integral part of Title 30, chapter 7, and the provisions of Title 30, chapter 7, apply to [sections 38 and 39].

Section 92. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 93. Applicability. [This act] applies to a document of title that is issued or a bailment that arises on or after [the effective date of this act]. [This act] does not apply to a document of title that is issued or a bailment that arises before [the effective date of this act] even if the document of title or bailment would be subject to [this act] if the document of title had been issued or bailment had arisen after [the effective date of this act]. [This act] does not apply to a right of action that has accrued before [the effective date of this act].

Approved May 2, 2005

CHAPTER NO. 576

[SB 443]

AN ACT REQUIRING MOTOR VEHICLE INSURANCE PREMIUM REDUCTIONS FOR MONTANA NATIONAL GUARD MEMBERS TRAINED IN DEFENSIVE DRIVING; EXPANDING THE DEFINITION OF "HIGHWAY TRAFFIC SAFETY PROGRAM" TO INCLUDE CERTAIN DEFENSIVE DRIVING TRAINING PROGRAMS; AND AMENDING SECTIONS 33-16-203 AND 61-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rate reduction for military defensive drivers — effective period — exclusions. (1) (a) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for a member of the Montana national guard who is an insured operator of a covered nonmilitary vehicle and who has successfully completed a defensive driving course referred to in 61-2-102(2).

(b) Any discount used by the insurer is presumed appropriate unless credible data demonstrates otherwise.

(2) The premium reduction required under subsection (1)(a) is effective for an insured for 2 years after successful completion of the approved course. Each person shall successfully complete a defensive driving course referred to in 61-2-102(2) every 2 years to remain eligible for the reduction provided in subsection (1)(a).

(3) Subsection (1)(a) does not apply if the approved course is taken as punishment specified by a court or other governmental entity for a moving traffic violation.

(4) An insurer may deny the discount under subsection (1)(a) if within 3 years prior to the insured's application for the rate reduction or during the period for which the rate reduction is provided:

- (a) the insured was convicted of or plead guilty or nolo contendere to a moving traffic violation;
- (b) the insured has forfeited bail or collateral for a moving traffic violation; or
- (c) the insured was convicted by a court or found at fault in a motor vehicle accident.

Section 2. Section 33-16-203, MCA, is amended to read:

“33-16-203. Rates filed. (1) Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate ~~such the~~ filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers, ~~but. However,~~ this provision does not prohibit a member or subscriber from filing ~~any such~~ rates on its own behalf. Any deviations from a rating organization’s rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

(2) ~~In accordance with 33-16-222, rates~~ Rates filed must provide for a premium reduction to:

- (a) qualified insured operators 55 years of age or older *in accordance with 33-16-222; or*
- (b) *qualified members of the Montana national guard in accordance with [section 1].”*

Section 3. Section 61-2-102, MCA, is amended to read:

“61-2-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

- (1) “Department” means the department of transportation.
- (2) “Highway traffic safety program” means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program must be in accordance with uniform ~~standards established by the secretary of commerce of the United States under guidelines established pursuant to Title 23, U.S.C. 402, as amended, and may include defensive driving programs administered by the entity designated by the governor in 61-2-103.~~ Nothing in this part restricts or prohibits the establishment of standards that enlarge or implement the federal standards.

(3) “Political subdivisions” means each county, incorporated city or town, and school district within the boundaries of the state.”

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 16, part 2, and the provisions of Title 33, chapter 16, part 2, apply to [section 1].

Approved May 2, 2005

CHAPTER NO. 577

[SB 445]

AN ACT AUTHORIZING THE BOARD OF REGENTS OF THE MONTANA UNIVERSITY SYSTEM TO WAIVE TUITION REGARDLESS OF THE AVAILABILITY OF OTHER WAIVERS FOR A QUALIFIED MEMBER OF

THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA; REPEALING SECTION 10-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-421, MCA, is amended to read:

“20-25-421. Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

~~(i)~~(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

~~(ii)~~(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

~~(iii)~~(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

~~(iv)~~(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

~~(v)~~(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

~~(vi)~~(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(e) *waive tuition for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program established by the department of military affairs;*

(f) *the waivers provided for in subsection (2)(e) are intended to be available for up to 5 years after the person qualifies.*

~~(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in 10-1-121."~~

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the termination date of this act].

Section 3. Repealer. Section 10-1-121, MCA, is repealed.

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to waivers granted on or after [the effective date of this act].

Section 5. Termination. [This act] terminates June 30, 2009.

Approved May 2, 2005

CHAPTER NO. 578

[SB 461]

AN ACT REQUIRING THE ATTACHMENT OF A RADIO-TRACKING COLLAR TO AT LEAST ONE WOLF IN A PACK THAT IS ACTIVE NEAR LIVESTOCK OR NEAR A POPULATION CENTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of radio-tracking collars for monitoring wolf packs.

(1) As part of a wolf management plan approved by the department, a radio-tracking collar must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department shall expend only the federal funds for wolf management purposes to fulfill the requirements of this section.

(3) The department may collaborate and cooperate with other state and federal agencies to fulfill the requirements of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 5, part 1, and the provisions of Title 87, chapter 5, part 1, apply to [section 1].

Approved May 2, 2005

CHAPTER NO. 579

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS

FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC TRUST FUND; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 3] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 3].

(2) The Montana arts council shall disburse money to projects authorized by [section 3] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 3].

(3) There is appropriated from the cultural and aesthetic projects account in the state special revenue fund to the Montana historical society \$30,000 for the biennium ending July 1, 2007, for care and conservation of capitol complex artwork.

Section 2. Fund transfer. At the beginning of fiscal year 2006, the amount of \$3,412,500 is transferred from the state general fund to the cultural and aesthetic projects trust fund established in 15-35-108 for the purpose of protection of the works of art in the capitol and for other cultural and aesthetic projects.

Section 3. Appropriation of cultural and aesthetic grant funds. The following projects are approved and \$792,925 is appropriated to the Montana arts council for the biennium ending June 30, 2007, from the cultural and aesthetic projects account:

Grant #	Grantee	Grant Amount
A. Special Project \$4,500 or Less		
1105	Miles City Speakers Bureau	\$4,500
1108	Preservation Cascade, Inc.	\$3,000
1102	Council for the Arts, Lincoln	\$2,500
1107	Montana Storytelling Roundup	\$4,500
1101	Butte Citizens for Preservation and Revitalization	\$4,500
1109	Signatures From Big Sky	\$4,500
1103	Fort William H. Harrison Museum Foundation	\$3,000
1104	Metropolitan Opera National Council	\$1,000
1106	Montana Mandolin Society	\$2,000
1110	Wibaux County Visioning Committee	\$3,550
B. Special Projects		
1126	Montana Committee for the Humanities	\$31,798
1129	Montana Preservation Alliance	\$17,600
1117	Emerson Cultural Center	\$10,600
1133	Prairie County Museum/Montana Historical Society	\$16,700
1123	Missoula Art Museum	\$14,100
1132	Pondera Arts Council	\$13,400

2577	MONTANA SESSION LAWS 2005	Ch. 579
1112	Bozeman Symphony Society	\$9,900
1134	Rimrock Opera Company	\$7,100
1124	Missoula Symphony Association	\$4,500
1135	Southwest Montana Arts Council	\$6,300
1127	Montana Historical Society	\$14,100
1137	VIAs, Inc.	\$12,000
1120	International Choral Festival	\$3,500
1121	KUFM-TV, Montana PBS	\$10,600
1138	World Museum of Mining	\$1,447
1122	Mission Valley Friends of the Arts	\$4,000
1111	Artisan Dance Theatre	\$14,100
1136	St. Vincent Health Care Foundation	\$4,500
1125	Montana Alliance for Arts Education	\$4,500
1128	Montana Museum of Art and Culture	\$3,500
1115	Children's Museum of Montana	\$6,200
1114	Chantilly Players	\$5,600
1130	National Museum of Forest Service History	\$2,500
1113	Browning Community Development Corporation	\$9,000
C. Operational Support		
1164	Montana Art Gallery Director's Association	\$14,100
1170	Montana Performing Arts Consortium	\$17,600
1167	Montana Association of Symphony Orchestras	\$6,300
1166	Montana Arts	\$10,600
1169	Montana Dance Arts Association	\$4,500
1177	Shakespeare in the Parks	\$17,600
1150	Custer County Art Center	\$22,600
1163	Montana Agricultural Center and Museum	\$17,000
1162	Missoula Children's Theatre, Inc.	\$30,000
1149	Carbon County Historical Society	\$15,500
1183	Writer's Voice (Billings YMCA)	\$17,600
1155	Great Falls Symphony Association	\$14,100
1142	Art Mobile of Montana	\$10,600
1159	Holter Museum of Art	\$21,200
1145	Billings Symphony Society	\$13,400
1140	Alberta Bair Theater	\$17,600
1176	Schoolhouse History and Art Center	\$10,600
1181	Western Heritage Center	\$14,100
1143	Big Horn Arts and Crafts Association	\$10,600
1182	Whitefish Theatre Company	\$10,600

Ch. 579	MONTANA SESSION LAWS 2005	2578
1157	Helena Symphony Orchestra and Chorale	\$14,100
1141	Archie Bray Foundation	\$14,100
1146	Butte Center for the Performing Arts	\$17,600
1154	Grandstreet Theatre	\$10,600
1173	Myrna Loy Center	\$14,100
1184	Yellowstone Art Museum	\$18,300
1171	Montana Repertory Theatre	\$10,600
1168	Montana Ballet Company	\$8,500
1158	Hockaday Museum of Art	\$8,500
1165	Montana Artists Refuge	\$4,500
1172	Museum of the Rockies	\$7,100
1175	Rocky Mountain Ballet Theater	\$7,100
1180	VSA Arts of Montana	\$7,100
1185	Young Audiences of Western Montana	\$5,600
1179	Vigilante Theatre Company	\$6,300
1147	Butte Symphony Association	\$7,100
1160	Intermountain Opera	\$8,500
1151	District 7 HRDC Growth Thru Art	\$10,600
1156	Hamilton Players, Inc.	\$7,100
1148	Carbon County Arts Guild and Depot	\$6,400
1174	Northwest Montana Historical Society	\$4,500
1161	Miles City Preservation Commission	\$3,000
1178	Sunburst Community Foundation	\$5,300
1144	Billings Cultural Partners	\$2,000
D. Capital Expenditure		
1188	Liberty Village Arts Center and Gallery	\$12,300
1189	Meagher County Historical Association	\$4,500
1190	St. Labre Indian School and Museum	\$3,730
1186	Friends of the Madison Valley Library	\$4,500
1187	Lewistown Art Center	\$2,500

Section 4. Reversion of grant money. On July 1, 2007, the unencumbered balance of the 2007 biennium grants revert to the cultural and aesthetic projects account provided for in 15-35-108.

Section 5. Reduction of grants on pro rata basis. Except as provided in [section 1(3)], if money in the cultural and aesthetic projects account is insufficient to fund projects at the appropriation levels contained in [section 3], reductions to projects with funding greater than \$4,500 will be made on a pro rata basis.

Section 6. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 580

[HB 11]

AN ACT REVISING THE LAWS GOVERNING THE TREASURE STATE ENDOWMENT PROGRAM; REVISING THE USES OF THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AUTHORIZING EMERGENCY GRANTS AND MATCHING GRANTS FOR PRELIMINARY ENGINEERING STUDIES; ELIMINATING ANNUAL DEBT SERVICE SUBSIDIES ON LOCAL INFRASTRUCTURE PROJECTS, LOANS FROM THE PROCEEDS OF COAL SEVERANCE TAX BONDS AT A SUBSIDIZED INTEREST RATE, AND DEFERRED LOANS FOR PRELIMINARY ENGINEERING STUDY COSTS; REQUIRING REPORTS TO THE GOVERNOR AND THE LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTIONS 90-6-703, 90-6-710, AND 90-6-715, MCA, AND SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce \$16.2 million of the interest earnings from the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2007 biennium report to the 59th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2007 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant Amount
1. St. Ignatius, Town of (wastewater)	\$500,000
2. Rudyard-Hill County Water and Sewer District (wastewater)	524,503
3. Carter-Chouteau County Water and Sewer District (water)	500,000
4. Cascade, Town of (water)	500,000
5. Madison County (bridge)	179,911
6. Lewis and Clark County (wastewater)	288,757
7. Stillwater County (bridge)	399,853
8. Seeley Lake Sewer District (wastewater)	500,000
9. Dodson, Town of (wastewater)	427,500
10. Conrad, City of (wastewater)	500,000
11. Sweet Grass County (bridge)	144,989
12. Havre, City of (water)	500,000
13. Powell County (bridge)	158,348
14. Mineral County (bridge)	80,090
15. Glacier County (bridge)	500,000
16. Malta, City of (wastewater)	500,000
17. Crow Tribe (wastewater)	500,000
18. Libby, City of (wastewater)	500,000
19. Big Horn County (bridge)	142,500
20. Custer Area-Yellowstone County Water/Sewer District (wastewater)	500,000
21. Hill County (bridge)	450,750
22. Glasgow, City of (wastewater)	500,000
23. Valier, Town of (wastewater)	500,000
24. Sheridan, Town of (water)	500,000
25. Beaverhead County (bridge)	84,886
26. Whitefish, City of (water)	457,500
27. Richland County (bridge)	453,841
28. Upper and Lower River Road Water and Sewer District (water/wastewater)	500,000
29. Laurel, City of (wastewater)	500,000
30. Ennis, Town of (wastewater)	204,894
31. Choteau, City of (water)	500,000
32. Missoula County (bridge)	275,172
33. Miles City, City of (water)	500,000
34. Yellowstone County (bridge)	187,800
35. Ranch County Water and Sewer District (water)	500,000
36. Hysham, Town of (water)	462,359
37. Carbon County (bridge)	97,100

2581	MONTANA SESSION LAWS 2005	Ch. 580
38.	Spring Meadows-Missoula County Water District (water)	487,500
39.	Woods Bay Homesites-Lake County Water and Sewer District (water)	500,000
40.	Bigfork County Water/Sewer District (wastewater)	460,000
41.	Circle, Town of (wastewater)	500,000
42.	Fairfield, Town of (wastewater)	126,000
43.	Sun Prairie Village-Cascade County Water and Sewer District (water)	500,000

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds during the 2007 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2007, are insufficient to fully fund projects numbered 1 through 40 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2007, the 61st legislature is encouraged to give priority to funding these projects before funding any new projects. However, any of the projects numbered 1 through 40 listed in subsection (3) that have not satisfied the conditions described in [section 3(1)] by June 30, 2007, lose any guarantee of receiving funds deposited into the treasure state endowment special revenue account during the 2007 biennium. Funding for these projects will be provided only as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment special revenue account during the 2007 biennium. Funding for these projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)].

(6) Projects numbered 41 through 43 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may receive grant funds only if one or more of the projects numbered 1 through 40 terminate their right to the awarded funds in writing prior to the end of the 2007 biennium.

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account during the 2007 biennium are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds available to the first grant recipient that has satisfied the conditions described in [section 3(1)] and that is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

Section 2. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(4)(c).

Section 3. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The scope of work and budget for the project as approved by the department in the grant agreement must be consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(c) The grant recipient must have a project management plan and a long-term operations and maintenance plan that is approved by the department.

(d) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(e) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(f) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2007 biennium report to the 59th legislature.

(g) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall commit grant funds to projects authorized in the order of priority listed in [section 1(3)] to grant recipients that have met the conditions in subsection (1) as treasure state endowment special revenue account interest income becomes available during the 2007 biennium.

(3) If a grant recipient authorized in [section 1(3)] has not met the conditions in subsection (1) of this section, the department shall move down the list of projects in the order of priority listed in [section 1(3)] to the next project that has met the conditions in subsection (1) of this section.

(4) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(5) In the event that actual project expenses are lower than the projected expense of the project, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided to grant recipients in proportion to all other project funding sources. In the alternative, the department may authorize the use of the remaining authorized treasure state endowment program grant amount for the construction of additional, directly related components that will further enhance the overall system.

(6) In the event that actual project expenses are lower than the projected expense of a project as presented in the grant recipient's treasure state endowment program application, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(7) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of

treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(8) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the treasure state endowment program project administration manual, adopted by the department through the administrative rulemaking process.

Section 4. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce \$100,000 for the biennium beginning July 1, 2005, from the interest earnings of the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 5. Appropriations from treasure state endowment special revenue account for preliminary engineering grants. There is appropriated to the department of commerce \$600,000 for the biennium beginning July 1, 2005, from the interest earnings of the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary engineering grants for infrastructure projects, as defined in 90-6-701.

Section 6. Section 1, Chapter 435, Laws of 2001, is amended to read:

“Section 1. Appropriations from treasure state endowment special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2003 biennium report to the 57th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2003 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant
1. Lewis and Clark County (bridge)	\$500,000
2. Alder Water and Sewer District, Madison County (wastewater)	500,000
3. Hot Springs, Town of (water)	500,000
4. Whitewater Water and Sewer District, Phillips County (wastewater)	500,000

Ch. 580	MONTANA SESSION LAWS 2005	2584
5. Virginia City, Town of (wastewater)		500,000
6. Froid, Town of (wastewater)		390,600
7. Nashua, Town of (wastewater)		500,000
8. Richland County (bridge)		296,500
9. Lavina, Town of (wastewater)		483,000
10. Gardiner-Park County Water District, Park County (water)		398,500
11. Park City/County Water and Sewer District, Stillwater County (wastewater)		500,000
12. Stanford, Town of (wastewater)		500,000
13. Florence County Water and Sewer District, ~~Ravalli County (wastewater)~~		~~500,000~~
14. Ashland County Water and Sewer District, Rosebud County (wastewater)		500,000
15. Geraldine, Town of (water)		167,460
16. Manhattan, Town of (wastewater)		500,000
17. Lambert County Water and Sewer District, Richland County (water)		403,000
18. Browning, Town of (water)		500,000
19. Kevin, Town of (wastewater)		385,000
20. Power-Teton Co. Water and Sewer District, Teton County (water)		425,000
21. Blackfeet Tribe (water)		500,000
22. Whitefish, City of (wastewater)		500,000
23. Choteau, City of (wastewater)		500,000
24. Lockwood Water and Sewer District, Yellowstone County (wastewater)		500,000
25. Eureka, Town of (water)		369,000
26. Shelby, City of (water)		500,000
27. Charlo Sewer District, Lake County (wastewater)		500,000
~~28. Essex Water and Sewer District, Flathead County (water)~~		~~225,000~~
28. <i>Essex Water and Sewer District, Flathead County (water)</i>		100,000
29. Yellowstone County (bridge)		300,000
30. Hinsdale Water and Sewer District, Valley County (wastewater)		329,000
31. Havre, City of (water)		500,000
32. Helena, City of (storm drain)		500,000
33. Fairfield, Town of (wastewater)		500,000
34. Jordan, Town of (water/wastewater)		500,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2003 biennium under 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2003, are insufficient to fully fund the projects numbered 1 through 31 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2003, these projects will be funded from deposits into the treasure state endowment special revenue account made during the 2005 biennium, before projects authorized by the 58th legislature receive funding from the account. However, any of the projects numbered 1 through 31 listed in subsection (3) that have not completed the conditions described in [section 3(1)] by January 1, 2003, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 32 through 34 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 31 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 31 listed in subsection (3), those funds could be made available to projects numbered 32 through 34 listed in subsection (3) that have completed the conditions described in [section 3(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds from the treasure state endowment special revenue account available to the grant recipient on condition that the grant recipient is able to firmly commit the balance of the amount necessary to fund the project in its entirety."

Section 7. Section 90-6-703, MCA, is amended to read:

"90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

- (a) matching grants for local infrastructure projects;
- (b) ~~annual debt service subsidies on local infrastructure projects matching grants for preliminary engineering studies; and~~
- (c) ~~loans from the proceeds of coal severance tax bonds at a subsidized interest rate emergency grants for local infrastructure projects.~~
- (2) ~~The department of natural resources and conservation and the department of commerce:~~
 - (a) ~~may adopt rules to commit to interest rate subsidies for local infrastructure projects and may allow the subsidies to be paid over the life of the loan or bonding period; and~~
 - (b) ~~may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged.~~

(2) *The department of commerce may provide local governments with emergency grants for infrastructure projects only if necessary to remedy conditions that, if allowed to continue until legislative approval could be obtained, will endanger the public health or safety and expose the applicant to substantial financial risk. The department shall report to the governor and the*

legislative finance committee regarding emergency grants that are awarded during each biennium.

(3) The department of commerce may provide local governments with matching grants for preliminary engineering studies for infrastructure projects. The department shall report to the governor and the legislature regarding preliminary engineering grants that are awarded during each biennium.”

Section 8. Section 90-6-710, MCA, is amended to read:

“90-6-710. (Temporary) Priorities for projects — procedure — rulemaking. (1) The amount of \$425,000 is statutorily appropriated, as provided in 17-7-502, to the department of commerce for each biennium for the period beginning July 1, 2001, and ending June 30, 2005, from the treasure state endowment special revenue account for the purpose of providing communities with grants for engineering work for projects provided for in subsection (3).

(2) The department of commerce must receive proposals for projects from local governments as defined in 90-6-701(3)(b). The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. The department shall prepare and submit a list containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (3). The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(3) In preparing recommendations under subsection (2), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(4) After the review required by subsection (2), the projects must be approved by the legislature.

(5) The department shall adopt rules necessary to implement the treasure state endowment program. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

90-6-710. (Effective July 1, 2005) Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for *infrastructure* projects from local governments ~~as defined in 90-6-701(3)(b)~~. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. ~~The~~ *For the projects under 90-6-703(1)(a), the* department shall prepare and submit a list containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2). The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

(5) *The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to review each project's status and determine whether the authorized grant should be withdrawn.*

Section 9. Section 90-6-715, MCA, is amended to read:

“90-6-715. (Temporary) Special revenue account — use. (1) (a) The treasure state endowment regional water system special revenue account may be used to:

(i) provide matching funds to plan and construct regional drinking water systems in Montana;

(ii) *pay the debt service for regional water system bond issues; and*

(iii) ~~to~~ provide funding of administrative expenses for state and local entities associated with regional drinking water systems.

(b) Except for the *debt service* administrative expenses provided for in ~~this~~ subsection (1)(a), each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of natural resources and conservation for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)”

Section 10. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated to the department of natural resources and conservation the interest earnings of the treasure state endowment regional water system special revenue account to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) Up to \$5,300,000 is appropriated for the 2007 biennium to provide the state's share for regional water system projects.

(4) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 12(1)].

(5) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2007 biennium under 17-7-302.

Section 11. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 10(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(4)(d).

Section 12. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 10 through 12] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 13. Coordination instruction. If House Bill No. 748 is passed and approved, then [sections 10 through 12 of this act] are void.

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 15. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 581

[HB 28]

AN ACT ESTABLISHING A LEGISLATIVE BRANCH RESERVE ACCOUNT; PROVIDING FOR THE USE AND FUNDING OF THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-304 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative branch reserve account. (1) There is a legislative branch reserve account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for major legislative branch information technology projects, including the purchase of hardware, software, and consulting services for new initiatives and replacement and upgrading of existing systems.

(b) The money in the account may be expended only with the approval of the legislative council. The legislative branch computer system planning council may make recommendations to the legislative council for the use of the money in the account.

(3) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.

Section 2. Section 17-7-304, MCA, is amended to read:

“17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) ~~After~~ *Subject to subsection (4)(b), after* the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) *Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in [section 1].*

(ii) *After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in [section 1]. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account.”*

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent

law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; [section 1]; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 11, part 4, and the provisions of Title 5, chapter 11, part 4, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003.

Approved May 6, 2005

CHAPTER NO. 582

[HB 45]

AN ACT REVISING THE LAWS GOVERNING SICK LEAVE; REVISING THE DEFINITION OF SICK LEAVE TO INCLUDE SITUATIONS ALLOWED BY CURRENT CUSTOM AND USAGE; MAKING THE ADOPTION OF RULES PERMISSIVE RATHER THAN MANDATORY; AMENDING SECTIONS 2-18-601 AND 2-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-601, MCA, is amended to read:

“2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) “Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) “Break in service” means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) “Continuous employment” means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) “Employee” means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) “Full-time employee” means an employee who normally works 40 hours a week.

(6) “Holiday” means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) “Part-time employee” means an employee who normally works less than 40 hours a week.

(8) “Permanent employee” means a permanent employee as defined in 2-18-101.

(9) “Seasonal employee” means a seasonal employee as defined in 2-18-101.

(10) “Short-term worker” means a short-term worker as defined in 2-18-101.

(11) “Sick leave” means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee’s immediate family; or ~~for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606~~

(b) *the time that an employee is unable to perform job duties because of:*

(i) *a physical or mental illness, injury, or disability;*

(ii) *maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee’s child;*

(iii) *parental leave for a permanent employee as provided in 2-18-606;*

(iv) *quarantine resulting from exposure to a contagious disease;*

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (11)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 2. Section 2-18-604, MCA, is amended to read:

"2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and ~~shall~~ *may, when necessary*, promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse ~~thereof of these provisions~~. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision ~~thereof of the state~~."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2005

CHAPTER NO. 583

[HB 99]

AN ACT INCREASING THE PENALTIES FOR DRIVING WHILE THE PERSON'S LICENSE IS SUSPENDED OR REVOKED IF THE REASON FOR THE SUSPENSION OR REVOCATION WAS THAT THE PERSON WAS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT OR THE SUSPENSION WAS FOR REFUSAL TO TAKE A TEST FOR ALCOHOL OR DRUGS REQUESTED BY A PEACE OFFICER WHO BELIEVED THAT THE PERSON MIGHT BE DRIVING UNDER THE INFLUENCE; AND AMENDING SECTIONS 61-5-212 AND 61-8-733, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state; or

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle under federal regulations.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500, *except that if the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.*

(2) (a) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license or privilege to drive was suspended or revoked shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 2. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle. (1) On the second or subsequent conviction of a violation of 61-8-401 or 61-8-406 *or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension*

was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall order that each motor vehicle owned by the person at the time of the offense be either seized and subjected to the procedure provided under 61-8-421 or equipped with an ignition interlock device as provided under 61-8-442.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

Approved May 6, 2005

CHAPTER NO. 584

[HB 115]

AN ACT AMENDING THE LAWS RELATING TO THE EXEMPTION OF PROPERTY FROM PROPERTY TAXATION; ALLOWING THE CHURCH EXEMPTION TO EXTEND TO EDUCATIONAL OR YOUTH RECREATIONAL FACILITIES OPEN TO THE PUBLIC; LIMITING THE ACREAGE OF PROPERTY THAT IS TAX-EXEMPT FOR CHURCHES AND PARSONAGES; DEFINING "CLERGY"; LIMITING THE ACREAGE EXEMPTION FOR EDUCATIONAL PROPERTY AND REQUIRING AN ATTENDANCE POLICY, CURRICULUM, AND INSTRUCTION; PROVIDING THAT UP TO 15 ACRES OF PROPERTY PURCHASED FOR CHARITABLE USE IS EXEMPT AT THE TIME OF PURCHASE; PROVIDING THAT IF EXEMPT PROPERTY IS NOT USED FOR A CHARITABLE PURPOSE WITHIN 8 YEARS OR IS SOLD, THEN LOST TAX REVENUE MUST BE REPAYED; PROVIDING THAT THE REPAYMENT AMOUNT IS A LIEN UPON THE PROPERTY; AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage.

(1) Class four property includes:

(a) subject to 15-6-201~~(1)(z)~~(1)(bb) and ~~(1)(aa)~~ (1)(cc) and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-201~~(1)(z)~~(1)(bb) and ~~(1)(aa)~~ (1)(cc) and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-201~~(1)(z)~~(1)(bb), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, property described in subsections (1)(a), (1)(b), (1)(e), (1)(f), and (1)(g) of this section is taxed at:

(i) 3.40% of its taxable market value in tax year 2003;

(ii) 3.3% of its taxable market value in tax year 2004;

(iii) 3.22% of its taxable market value in tax year 2005;

(iv) 3.14% of its taxable market value in tax year 2006;

(v) 3.07% of its taxable market value in tax year 2007; and

(vi) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$ 6,000	\$0 - \$8,000	20%
\$6,001 - \$9,200	\$8,001 - \$14,000	50%
\$9,201 - \$15,000	\$14,001 - \$20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(~~bb~~)(1)(dd);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(~~cc~~)(1)(t), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(~~cc~~)(1)(t), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 3. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

- (a) except as provided in 15-24-1203, the property of:
- (i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not ~~operating~~ operated for gain or profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, ~~with land that they occupy~~ and furnishings in the buildings; that are owned by a church and used for actual religious worship or for residences of the clergy, *not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;*

(c) property owned and used exclusively for agricultural and horticultural societies, ~~for educational purposes, and not operated for gain or profit;~~

(d) *property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of the educational institution, which:*

(i) *is not operated for gain or profit;*

(ii) *has an attendance policy; and*

(iii) *has a definable curriculum with systematic instruction;*

(e) *property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.*

~~(d)~~(f) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and *not* operated for ~~private or corporate~~ gain or profit;

~~(e)~~(g) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

~~(h)~~(h) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

~~(g)~~(i) public museums, art galleries, zoos, and observatories that are not ~~used or held for private or corporate~~ *operated for gain or profit*;

~~(h)~~(j) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

~~(i)~~(k) truck canopy covers or toppers and campers;

~~(j)~~(l) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

~~(k)~~(m) motor homes;

~~(l)~~(n) all watercraft;

~~(m)~~(o) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

~~(n)~~(p) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

~~(o)~~(q) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

~~(p)~~(r) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

~~(q)~~(s) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection ~~(1)(q)~~ (1)(s), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

~~(r)~~(t) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that

business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

~~(s)~~(u) harness, saddlery, and other tack equipment;

~~(t)~~(v) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

~~(u)~~(w) timber as defined in 15-44-102;

~~(v)~~(x) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

~~(w)~~(y) all vehicles registered under 61-3-456;

~~(x)~~(z) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection ~~(1)(x)(i)~~ (1)(z)(i);

~~(y)~~(aa) motorcycles and quadricycles;

~~(z)~~(bb) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

~~(aa)~~(cc) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

~~(bb)~~(dd) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(ee)~~(ee) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(dd)~~(ff) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

~~(ee)~~(gg) light vehicles as defined in 61-1-139; and

~~(ff)~~(hh) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;

(ii) all mining machinery, fixtures, equipment, tools, and supplies;

(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(v) all goods and equipment that are intended for rent or lease;

(vi) special mobile equipment as defined in 61-1-104;

(vii) furniture, fixtures, and equipment;

(viii) x-ray and medical and dental equipment;

(ix) citizens' band radios and mobile telephones;

(x) radio and television broadcasting and transmitting equipment;

(xi) cable television systems;

(xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment.

(2) (a) *For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:*

(i) *an ordained minister, priest, or rabbi;*

(ii) *a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;*

(iii) *a member of a religious order who has taken a vow of poverty; or*

(iv) *a Christian Science practitioner.*

~~(a)~~(b) For the purposes of subsection ~~(1)(e)~~ (1)(g):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

~~(b)~~(c) For the purposes of subsection ~~(1)(g)~~ (1)(i), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property *owned by the public museum, art gallery, zoo, or observatory that is* reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

~~(3)~~(4) For the purposes of subsection ~~(1)(bb)~~ (1)(dd):

(a) “industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) “industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

~~(4)~~(5) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (a) \$20,000 in the case of a single-family residential dwelling;
- (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 4. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) except as provided in subsection (1)(b), change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-201~~(1)(a)~~~~(1)(b)~~ and ~~(1)(aa)~~ (1)(cc) or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

- (i) the total amount of mills levied against the property in the prior year; and
- (ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 5. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201~~(1)(x)~~(1)(bb) and ~~(1)(aa)~~ (1)(cc).

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town."

Section 6. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-31-124 and 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201~~(4)~~(5) may not be applied to a facility for which a credit is claimed pursuant to this part."

Section 7. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through ~~(1)(e)~~ (1)(g), ~~(1)(g)~~ (1)(i), ~~(1)(m)~~ (1)(o), ~~(1)(o)~~ (1)(q), ~~(1)(q)~~ (1)(s), or ~~(1)(w)~~ (1)(y); 15-6-203, ~~or 15-6-215, except as provided in 61-3-520, or 15-6-215, except as provided in 61-3-520;~~

(b) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(c) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire registration period."

Section 8. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7

days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through ~~(1)(e)~~ (1)(g), ~~(1)(g)~~ (1)(i), ~~(1)(e)~~ (1)(q), ~~(1)(q)~~ (1)(s), and ~~(1)(x)~~ (1)(x) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004.

Approved May 6, 2005

CHAPTER NO. 585

[HB 172]

AN ACT REVISING CERTAIN RESIDENT AND NONRESIDENT FISHING AND HUNTING LICENSE AND DRAWING FEES; CREATING A RESIDENT SENIOR COMBINATION LICENSE; AMENDING SECTIONS 87-2-113, 87-2-202, 87-2-301, 87-2-306, 87-2-401, 87-2-403, 87-2-411, 87-2-501, 87-2-505, 87-2-508, 87-2-510, 87-2-701, 87-2-704, 87-2-708, 87-2-711, 87-2-801, 87-2-803, AND 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Resident senior combination license. A resident, as defined in 87-2-102, who is 62 years of age or older or who will turn 62 years old before or during the season for which the license is issued may purchase a resident senior combination license for \$55. The resident senior combination license entitles the holder to exercise all rights granted to holders of Class A, Class A-1, and Class A-3 licenses and includes an elk tag and a resident wildlife conservation license.

Section 2. Section 87-2-113, MCA, is amended to read:

"87-2-113. Drawing and application fees. (1) When the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a ~~\$3~~ \$5 per species drawing fee with each application submitted.

(2) (a) If a resident participates in a preference system adopted by the commission, the department shall collect an additional application fee of \$2 for each application form to fund the administration of the preference system.

(b) If a nonresident participates in a preference system adopted by the commission, the department shall collect an additional application fee of \$20 for each application form to fund the administration of the preference system.

(3) Drawing fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(4) The payment of a drawing fee confers no hunting rights or privileges.

(5) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304.”

Section 3. Section 87-2-202, MCA, is amended to read:

“87-2-202. Application — fee — expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant’s name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver’s license, a Montana driver’s examiner’s identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant’s burden to provide documentation establishing the applicant’s identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~\$6.25~~ \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~\$9.25~~ \$10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant’s social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Subsections (3)(c) and (3)(d) terminate March 1, 2006—sec. 9, Ch. 216, L. 2001; bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) *enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.*)”

Section 4. Section 87-2-301, MCA, is amended to read:

“87-2-301. Class A—resident fishing license. Any A resident, as defined by 87-2-102, upon payment of a fee of ~~\$11 beginning March 1, 1992, and \$13 beginning March 1, 1994~~ \$18, ~~shall be entitled to receive a Class A license which shall entitle that authorizes the holder thereof of the license to fish with hook and line or rod as authorized by regulations prescribed by rules of the department.~~”

Section 5. Section 87-2-306, MCA, is amended to read:

“87-2-306. Paddlefish tags. (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of ~~\$5~~ \$6.50 for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, Class A-8, Class B, Class B-4, and Class B-5 fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license.”

Section 6. Section 87-2-401, MCA, is amended to read:

“87-2-401. Class A-1—resident upland game bird license. Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~\$6~~ \$7.50, receive a Class A-1 license that entitles a holder who is 12 years of age or older to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.”

Section 7. Section 87-2-403, MCA, is amended to read:

“87-2-403. (Temporary) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is ~~\$5~~ \$6.50 for a resident and \$115 for a nonresident. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is ~~\$5~~ \$6.50 for a resident and \$105 for a nonresident. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license."

Section 8. Section 87-2-411, MCA, is amended to read:

"87-2-411. License required to hunt migratory game birds — fees — disposition of proceeds. (1) A person 16 years of age or older may not hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for a resident to purchase the license is ~~\$5~~ \$6.50. The fee for a nonresident to purchase the license is \$50.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana."

Section 9. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7, A-9—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference — fees. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

- (a) Class A-3, deer A tag, ~~\$13~~ \$16;
- (b) Class A-4, deer B tag, ~~\$8~~ \$10;
- (c) Class A-5, elk tag, ~~\$16~~ \$20;
- (d) Class A-6, black bear tag, ~~\$15~~ \$19;
- (e) Class A-7, antlerless elk tag, ~~\$16~~ \$20;
- (f) Class A-9, resident antlerless elk B tag, ~~\$16~~ \$20.

(2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) Subject to the management provisions provided in 87-1-321 through 87-1-325, a person may not take more than two elk during any license year, only one of which may be antlered. A person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or

nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) Subject to the management provisions provided in 87-1-321 through 87-1-325, a nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Subject to the management provisions provided in 87-1-321 through 87-1-325, 15% of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 10. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~\$625~~ **\$628** plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.

(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is ~~\$270~~ **\$273**. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~\$550~~ **\$553** and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big

game combination license ~~which shall entitle~~ *that entitles* a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.

(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is ~~\$270~~ \$273. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions ~~determined~~ *specified* by the commission."

Section 11. Section 87-2-508, MCA, is amended to read:

"87-2-508. Class D-2—resident mountain lion license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of ~~\$15~~ \$19, may receive a Class D-2 license that entitles a holder who is 12 years of age or older to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of \$50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy."

Section 12. Section 87-2-510, MCA, is amended to read:

"87-2-510. (Temporary) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~\$325~~ \$328 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of ~~\$325~~ \$328 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Not more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-510. (Effective March 1, 2006) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~\$300~~ **\$303**, purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. The fee for a Class B-11 license is ~~\$300~~ **\$303** if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor. The license is subject to the limitations prescribed by law and department regulation. A person may apply for a license to the fish, wildlife, and parks office, Helena, Montana. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.”

Section 13. Section 87-2-701, MCA, is amended to read:

“87-2-701. (Temporary) Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

- (a) moose—resident, ~~\$75~~ **\$125**; nonresident, ~~\$750~~ **\$750**;
- (b) mountain goat—resident, ~~\$75~~ **\$125**; nonresident, ~~\$750~~ **\$750**;
- (c) mountain sheep—resident, ~~\$75~~ **\$125**; nonresident, ~~\$750~~ **\$750**;
- (d) antelope—resident, ~~\$11~~ **\$14**; nonresident, \$200;
- (e) grizzly bear—resident, \$50; nonresident, \$300;
- (f) black bear—nonresident, ~~\$350~~ **\$350**;
- (g) wild buffalo or bison—resident, ~~\$75~~ **\$125**; nonresident, ~~\$750~~ **\$750**.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of \$25 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-701. (Effective March 1, 2006) Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

- (a) moose—resident, ~~\$75~~ **\$125**; nonresident, ~~\$980~~ **\$750**;

- (b) mountain goat—resident, ~~\$75~~ \$125; nonresident, ~~\$980~~ \$750;
- (c) mountain sheep—resident, ~~\$75~~ \$125; nonresident, ~~\$980~~ \$750;
- (d) antelope—resident, ~~\$11~~ \$14; nonresident, ~~\$180~~ \$200;
- (e) grizzly bear—resident, \$50; nonresident, \$300;
- (f) black bear—nonresident, ~~\$330~~ \$350;
- (g) wild buffalo or bison—resident, ~~\$75~~ \$125; nonresident, ~~\$750~~ \$750.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of \$25 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department.”

Section 14. Section 87-2-704, MCA, is amended to read:

“87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.

(4) The fee for a special elk permit is ~~\$3~~ \$4.

(5) The department may adopt rules necessary to implement this section.”

Section 15. Section 87-2-708, MCA, is amended to read:

“87-2-708. Class A-2—special bow and arrow license. A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of ~~\$8~~ \$10, a Class A-2 license that authorizes the holder to hunt with bow and arrow the game animals authorized by the licenses held and to possess the carcass of the game animals during seasons and in areas designated by the department.”

Section 16. Section 87-2-711, MCA, is amended to read:

“87-2-711. (Temporary) Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) upon payment of the sum of ~~\$54~~ \$70, plus the resident hunting access enhancement fee in 87-2-202(3)(c), a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of ~~\$64~~ \$85, plus the resident hunting access enhancement fee in 87-2-202(3)(c), a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department may furnish each holder of a combination sports license an appropriate decal. (Terminates March 1, 2006—sec. 9, Ch. 216, L. 2001.)

87-2-711. (Effective March 1, 2006) Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) upon payment of the sum of ~~\$54~~ \$70, a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of ~~\$64~~ \$85, a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department may furnish each holder of a combination sports license an appropriate decal.”

Section 17. Section 87-2-801, MCA, is amended to read:

“87-2-801. Residents over sixty-two years of age — resident or nonresident legion of valor members. (1) A resident, as defined in 87-2-102, who is 62 years of age or older is entitled to fish and hunt game birds, *not including wild turkeys*, with a conservation license issued by the department. The form of the license must be prescribed by the department.

(2) A resident who is 62 years of age or older is also entitled to purchase ~~regular resident deer and elk tags at a price that is one-half of the fee paid by a resident who is 15 years old or older and who is under 62 years of age a Class A-3 deer A tag for \$10 and a Class A-5 elk tag for \$12.~~

(3) Regardless of age, a resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a conservation license issued by the department.”

Section 18. Section 87-2-803, MCA, is amended to read:

“87-2-803. Persons with disabilities — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically

entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase ~~regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age~~ *a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8*. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (8). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (8). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses in the manner provided in subsection (2); and must be accompanied by a companion, as provided in subsection (4).

(6) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(7) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically

determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(8) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(9) Certification by a licensed physician under subsection (8) must be on a form provided by the department.

(10) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3)."

Section 19. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, *who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8 licenses at a price equal to one half the fee paid by a resident who is 15 years of age or older and under 62 years of age.*

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license ~~at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age for \$25.~~ A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license ~~at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age for \$8.~~

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license ~~at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age for \$3.~~

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 20. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [section 1].

Section 21. Coordination instruction. If House Bill No.79 is not passed and approved, then 87-2-504 must be amended to read:

"87-2-504. (Temporary) Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, \$250;

(ii) Class B-8, deer B tag, \$75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person

who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena, Montana, to purchase one each of the following licenses:

- (i) Class B-7, deer A tag, \$250;
- (ii) Class B-8, deer B tag, \$75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). *Not more than 5,000 Class B-7 licenses may be sold in any license year.*

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions."

Section 22. Effective date. [This act] is effective March 1, 2006.

Approved May 6, 2005

CHAPTER NO. 586

[HB 177]

AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING HOW RETENTION AND DESTRUCTION SCHEDULES ARE SET FOR ELECTION MATERIALS; CLARIFYING NOTICE PROCEDURES FOR THE CLOSE OF REGISTRATION; CLARIFYING PROVISIONS GOVERNING CANCELLATION OF AN ELECTOR'S REGISTRATION; CHANGING THE TIMEFRAME FOR REQUIRING NEW REGISTRATION AFTER A CHANGE OF RESIDENCE BEFORE AN ELECTION; CLARIFYING THAT A CANDIDATE MAY NOT FILE FOR MORE THAN ONE PUBLIC OFFICE; CLARIFYING HOW WRITE-IN VOTES ARE COUNTED; CLARIFYING WHEN A PRIMARY BALLOT DOES NOT NEED TO BE PREPARED; PROVIDING THAT A DECLARATION OF INTENT NEED NOT BE FILED FOR A WRITE-IN VOTE TO COUNT UNDER CERTAIN CIRCUMSTANCES; REVISING CHALLENGES OF AN ELECTOR'S RIGHT TO VOTE; CLARIFYING PROCEDURES FOR COUNTING VOTES WHENEVER A VOTING SYSTEM ERROR IS SUSPECTED DURING A VOTE COUNT; CLARIFYING COUNT AND RECOUNT PROCEDURES FOR PAPER AND NONPAPER BALLOTS; REVISING WHEN FEDERAL ABSENTEE BALLOTS MAY BE RECEIVED AND COUNTED; CLARIFYING THE TIMEFRAME FOR THE REQUISITION OF THE PRINTING AND DISTRIBUTION OF THE VOTER INFORMATION PAMPHLET; AND AMENDING SECTIONS 13-1-303, 13-2-301, 13-2-402, 13-2-514, 13-10-201, 13-10-204, 13-10-209, 13-10-211, 13-10-302, 13-13-212, 13-13-301, 13-14-112,

13-14-113, 13-15-107, 13-15-111, 13-15-206, 13-16-412, 13-16-414, 13-17-211, 13-21-206, AND 13-27-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Handling voting system error during count. (1) During a count of paper or nonpaper ballots in which votes are being automatically tabulated by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly:

(a) votes cast on paper ballots must be counted manually in accordance with 13-15-206(2);

(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211.

Section 2. Section 13-1-303, MCA, is amended to read:

“13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots ~~according to a plan approved by the secretary of state as provided in subsection (2).~~

~~(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of a plan, records may be disposed of as provided in the plan according to the retention schedules established by the local government records committee provided for in 2-6-402.”~~

Section 3. Section 13-2-301, MCA, is amended to read:

“13-2-301. Close of registration — procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least ~~once a week for 3~~ *three times in the 4 weeks before preceding* the close of registration. *The provisions of this subsection (1)(b) are fulfilled upon the third publication.*

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to

correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and the qualified elector is then eligible to vote in the next election.”

Section 4. Section 13-2-402, MCA, is amended to read:

“13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector *if*:

(1) ~~at the elector submits a written request of the registered elector for cancellation;~~

(2) ~~if a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department’s reports submitted to the county under 50-15-409 or through a newspaper obituary;~~

(3) ~~if the elector is of unsound mind as established by a court;~~

(4) ~~if the incarceration of the elector in a penal institution for a felony conviction is legally established;~~

(5) ~~if a certified copy of a court order directing the cancellation is filed with the election administrator;~~

~~(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;~~

~~(7)(6) if a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state; or~~

~~(8)(7) if the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive federal general elections; or~~

~~(8) the elector fails to meet any voter qualification that is listed in 13-1-111.”~~

Section 5. Section 13-2-514, MCA, is amended to read:

“13-2-514. Change of residence to another county. (1) An elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election unless the change occurs less than ~~45~~ 30 days before the election.

(2) An elector who changes residence to a different county ~~45~~ 30 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The registration information of an elector who votes under the provisions of subsection (2) must be updated in the statewide voter registration list after the election pursuant to rules adopted under 13-2-108.”

Section 6. Section 13-10-201, MCA, is amended to read:

“13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one *public* office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office

to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission; if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 7. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. An individual nominated by having the individual's name written in *and counted as provided in 13-15-206(5)* or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126."

Section 8. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except *that* there must be separate ballots for each political party entitled to

participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

- (i) each section is clearly identified as separate;
- (ii) the nonpartisan offices and ballot issues appear on each party's ballot; and
- (iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; ~~and~~ or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot must have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 9. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) *Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:*

- (a) (i) the candidate's first and last names;
- (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
- (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

- (a) dies;
- (b) withdraws from the election; or
- (c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission; if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) *The requirements in subsection (1) do not apply if:*

- (a) *an election is held;*
- (b) *a person's name is written in on the ballot;*
- (c) *the person is qualified for and seeks election to the office for which the person's name was written in; and*
- (d) *no other candidate has filed a declaration or petition for nomination or a declaration of intent."*

Section 10. Section 13-10-302, MCA, is amended to read:

"13-10-302. Write-in votes for previously nominated candidates. (1) Subject to subsection (2), if an elector casts a write-in vote for a candidate on a primary party ballot when the candidate's name also appears for the same office on another party's ballot, the write-in vote counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes and the votes cast for the candidate on the other party's ballots may not be added together.

(2) A write-in vote ~~may must~~ be counted ~~only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv) as provided in 13-15-206(5)."~~

Section 11. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions. (1)

An elector may apply for an absentee ballot; ~~by using only~~ a standardized form provided by rule by the secretary of state; ~~or~~ by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.”

Section 12. Section 13-13-301, MCA, is amended to read:

“13-13-301. Challenges ~~on election day~~. (1) An elector's right to vote may be challenged ~~on election day at any time~~ by any registered elector by ~~orally the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judges judge the grounds of the challenge.~~

(2) ~~An individual offering to vote may be orally challenged by any elector of the county upon the following~~ A challenge may be made on the grounds that the elector:

(a) ~~that the elector~~ is of unsound mind, as determined by a court;

(b) ~~that the elector~~ has voted before in that election; ~~or~~

(c) ~~that the elector~~ has been convicted of a felony and is serving a sentence in a penal institution;

(d) *is not registered as required by law;*

(e) *is not 18 years of age or older;*

(f) *has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or*

(g) *is a provisionally registered elector whose status has not been changed to a legally registered voter.*

~~(3) An elector challenged under this section may cast a provisional ballot, which must be handled as a provisional ballot under 13-15-107.~~

(3) *When a challenge has been made under this section:*

(a) *prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may*

question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 13. Section 13-14-112, MCA, is amended to read:

"13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one *public* office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position that the individual seeks.

(4) Declarations must be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing must be the same as provided in 13-10-201."

Section 14. Section 13-14-113, MCA, is amended to read:

"13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.

(4) Petitions for nomination must be filed at the same time provided in 13-10-201 for other candidates and offices.

(5) A candidate may not file for more than one *public* office.”

Section 15. Section 13-15-107, MCA, is amended to read:

“13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, an elector who casts a provisional ballot in person shall provide information to the election administrator as listed below:

(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);

(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a); ~~or~~

(c) mail a copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(d) *if applicable, the information to respond to a challenge under 13-13-301.*

(2) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.

(3) A provisional ballot must be counted if the election administrator verifies the elector’s eligibility pursuant to rules adopted under 13-13-603. However, a provisional ballot may not be counted if the election administrator cannot verify the elector’s eligibility under the rules. *If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector’s provisional ballot must be counted unless the challenger provides documentation by 5 p.m. the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.*

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.”

Section 16. Section 13-15-111, MCA, is amended to read:

“13-15-111. Write-in elections — general election. (1) An individual elected by having the individual’s name written in at the general election and receiving the largest number of votes *counted as provided in 13-15-206(5)* shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating the individual's acceptance of the position for which elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to comply with the requirements in subsection (1), the individual may not assume the position for which elected."

Section 17. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count *or recount* of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection ~~(7)~~ (7). If a vote has not been cast according to instructions, *the vote must be considered questionable and the entire ballot must be set aside and counted as provided in subsection (4) entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).*

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) ~~Except as provided in subsection (3)(b)~~ *When a voting system is tabulating a vote cast on a nonpaper ballot:*

(i) if a vote ~~on a paper ballot or nonpaper ballot~~ is recognized and counted by the system, it is a valid vote;

(ii) if a vote ~~on a paper ballot or nonpaper ballot is not recognized and counted by the system~~ *is not recognized and counted by the system*, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection ~~(7)~~ (7).

(b) ~~(i) If a paper ballot being counted by a voting system is rejected by the system or if the system records an overvote or undervote on a ballot, the ballot must be set aside and counted as provided in subsection (4). When a voting system is tabulating a vote cast on a paper ballot:~~

(i) if the voting system recognizes and counts the vote, it is a valid vote;

(ii) if the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an overvote or undervote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

~~(ii)(c)~~ If an election administrator ~~determines~~ or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in ~~13-16-414~~ [section 1].

~~(e)(d)~~ After all valid votes have been counted and totaled pursuant to ~~subsection (4) and subsection (4)~~ and this subsection (3), the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

~~(4) (a) Each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be counted if the voter's intent can be clearly determined and agreed upon by a majority of the election judges on the counting board in accordance with rules adopted pursuant to subsection (7).~~

~~(b) After each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) has been determined to be a valid vote, an invalid vote, or an intentional nonvote, the valid votes must be counted manually or automatically tabulated by the voting system. If the votes are to be counted manually, the votes must be tallied as provided in subsection (2). If the votes are to be counted using a voting system, all valid votes must be transferred to a ballot that will be accepted by the voting system and tabulated as provided in subsection (3).~~

~~(c) Votes counted pursuant to this subsection (4) and the votes initially counted under subsections (2) and (3) must be totaled.~~

~~(4) (a) (i) Before being counted, each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.~~

~~(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.~~

~~(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.~~

~~(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.~~

~~(5)(5)~~ A write-in vote may be counted ~~only~~ if:

~~(a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or~~

~~(b) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office.~~

~~(6)(6)~~ A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

~~(7)(7)~~ The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are

treated equally among jurisdictions using similar ballot types and voting systems.

~~(8)~~(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

- (a) the security of the counting process against fraud;
- (b) the place and time and public notice of each count or recount;
- (c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;
- (d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and
- (e) the keeping of a public record of count or recount proceedings.

~~(9)~~(9) For purposes of this section:

(a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue; and

(b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote."

Section 18. Section 13-16-412, MCA, is amended to read:

"13-16-412. Procedure for recounting *paper* ballots. ~~(1)~~ To conduct a recount of paper ballots:

~~(a)~~(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

~~(b)~~(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot *manually* in the manner provided in 13-15-206(2); and

~~(c)~~(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

~~(2) To prepare for a recount of ballots cast using a nonpaper-based voting system, the election administrator and election judges shall proceed as provided in rules adopted pursuant to 13-17-211 and the recount board shall conduct the recount as provided in 13-16-414."~~

Section 19. Section 13-16-414, MCA, is amended to read:

"13-16-414. Recount of votes ~~using voting system on nonpaper ballot.~~ (1) ~~(a)~~ Before a voting system may be used to automatically recount votes cast on a nonpaper ballot, the election administrator or recount board shall test the ~~automatic tabulating voting system~~ equipment in accordance with rules adopted pursuant to 13-17-211.

~~(b)~~(2) If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered must be recounted by the ~~tabulating equipment~~ voting system as provided in 13-15-206(3)(a).

~~(c)~~~~(i)~~(3) (a) If any errors are found in the test or if any questions remain as to the accuracy of the voting system, the board shall have the system checked by a

qualified individual who did not participate in the original preparation of the system.

(ii)(b) If the errors are corrected, the recount must proceed as provided in 13-15-206(3)(a).

~~(iii)(c) If the errors are not corrected, the recount must be conducted as provided in subsection (3) subject to rules adopted for the system under 13-17-211.~~

~~(2) The board may order a recount, which must be conducted as provided in subsection (3), if the board unanimously agrees that a recount is necessary to resolve all questions relating to the election.~~

~~(3) (a) A recount of paper ballots under this subsection (3) must be conducted manually as provided in 13-15-206(2).~~

~~(b) A recount of ballots cast using a nonpaper-based system must be conducted as provided in rules adopted under 13-17-211."~~

Section 20. Section 13-17-211, MCA, is amended to read:

"13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;

(d) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

~~(e) recount procedures under 13-16-412(2);~~

~~(f) voting system tests to correct discrepancies under 13-16-414(1)(a);~~

~~(g) what contingencies must be made for recounts pursuant to 13-16-414(3)(b);~~

~~(e) how to operate and test the system during counts or recounts;~~

~~(h)(f) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and~~

~~(i)(g) testing and certification of voting systems pursuant to 13-17-212."~~

Section 21. Section 13-21-206, MCA, is amended to read:

"13-21-206. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

(a) a valid application was received *made by the elector* pursuant to 13-21-210;

(b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

(c) ~~it the ballot is received~~ *sent by 8 p.m. on election day and is received by 3 p.m. the Monday following the election.*

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.

~~(3) A regular absentee ballot received from a United States elector after the polls close may not be counted."~~

Section 22. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of voter information pamphlet. (1) ~~The~~ *At least 110 days before the election, the* secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues ~~to be submitted to the people at least 110 days before the election at which they will be submitted.~~ The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing label may include an address line that addresses the voter or the current resident. The mailing must take place no later than 30 days before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Section 23. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply to [section 1].

Approved May 6, 2005

CHAPTER NO. 587

[HB 227]

AN ACT REVISING THE DELAYED PAYMENT OF PROPERTY TAXES WITHOUT PENALTY OR INTEREST BY A MEMBER OF THE MILITARY WHO IS ON ACTIVE DUTY OR HOSPITALIZED FOR DUTY-RELATED

INJURIES OR ILLNESS, INCLUDING MEMBERS OF THE NATIONAL GUARD AND ARMED FORCES RESERVES; CLARIFYING THE NOTIFICATION REQUIREMENT TO THE COUNTY TREASURER; AND AMENDING SECTIONS 10-1-606, 15-16-102, AND 15-24-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-606, MCA, is amended to read:

“10-1-606. Suspension of property taxes for persons in military service. (1) All taxes, whether on real or personal property, due on property owned by ~~any citizen a resident of the state of Montana in the active military or naval service of the United States shall, as defined by section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, while serving outside of Montana must be held in abeyance suspended; no proceedings~~ *Proceedings may not be taken for the collection thereof, of the taxes and no penalties or interests shall be added thereto until the expiration of the period of 1 year from and after the cessation of hostilities or discharge from military or naval service interest may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty. If the taxpayer was wounded, injured, or suffered a disease while serving in a combat zone or participating in a contingency operation as described in 10 U.S.C. 101(a)(13) that is serious enough to require hospitalization, proceedings may not be taken and penalties or interest may not accrue until 1 year after the taxpayer's release from the hospitalization.*

(2) ~~To obtain the benefits of this section, it shall be necessary for some person, on behalf of such person in the military or naval service, to the qualified taxpayer or a co-owner of the property or agent of the taxpayer shall file with the treasurer of the proper county an affidavit to the effect stating that the person against whom such the taxes are charged imposed is in such active military or naval service, which The affidavit must be filed at on or before the time when such that taxes would become delinquent, and upon the filing thereof the The county treasurer shall make a notation upon his records to the effect record that the collection of such the taxes is suspended on account because of the military or naval service of such the taxpayer. But nothing in this This section shall may not be so construed as to prevent such the county treasurer from receiving payment of any such taxes whenever offered.”~~

Section 2. Section 15-16-102, MCA, is amended to read:

“15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of *10-1-606* or Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the

delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) (a) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207."

Section 3. Section 15-24-202, MCA, is amended to read:

"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. (1) (a) The owner of a mobile home, manufactured home, or housetrailer ~~which~~ *that* is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in *10-1-606* or 15-24-206.

(b) The first payment is due on or before May 31 or within 30 days from the date of the notice of taxes due, whichever is later.

(c) The second payment is due no later than November 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home, manufactured home, or housetrailer have not been paid.

(3) Taxes assessed against a mobile home or manufactured home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and,

except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department of revenue shall issue tax-paid stickers to the county treasurers. Except as provided in 15-24-206 and 15-24-209, if a mobile home, manufactured home, or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer shall issue a tax-paid sticker to the owner of the mobile home, manufactured home, or housetrailer. Prior to and while in the process of moving the mobile home, manufactured home, or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home, manufactured home, or housetrailer. A mobile home or manufactured home movement declaration of destination provided for in 15-24-206 may not be issued unless:

- (a) the taxes have been paid in full to the county treasurer; or
- (b) the exceptions in 15-24-206(3) or 15-24-209 apply.

(5) On the movement of a mobile home, manufactured home, or housetrailer in violation of this part, the county treasurer for the county where the mobile home, manufactured home, or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or \$50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

Approved May 6, 2005

CHAPTER NO. 588

[HB 249]

AN ACT CREATING THE BIG SKY ECONOMIC DEVELOPMENT FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND; ALLOCATING AND TRANSFERRING COAL SEVERANCE TAX FUNDS TO THE BIG SKY ECONOMIC DEVELOPMENT FUND; ESTABLISHING A BIG SKY ECONOMIC DEVELOPMENT PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; PROVIDING FOR THE USE OF THE INTEREST AND INCOME FROM THE BIG SKY ECONOMIC DEVELOPMENT FUND TO PROVIDE FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS FOR QUALIFIED ECONOMIC DEVELOPMENT PROJECTS AND TO PROVIDE FINANCIAL ASSISTANCE TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND CERTAIN OTHER ECONOMIC DEVELOPMENT ORGANIZATIONS; ESTABLISHING THE PURPOSE OF THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; ENUMERATING THE TYPES OF FINANCIAL ASSISTANCE AVAILABLE THROUGH THE BIG SKY ECONOMIC DEVELOPMENT FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-5-703 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

“17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; ~~and~~

(f) a coal severance tax school bond contingency loan fund; *and*

(g) *a big sky economic development fund.*

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment

regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) (a) *From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).*

(b) *The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in [section 6], the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with [section 5]. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.*

~~(5)(6)~~ Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)

17-5-703. (Effective July 1, 2016) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; ~~and~~

(e) a coal severance tax school bond contingency loan fund; *and*

(f) *a big sky economic development fund.*

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond

contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) (a) *From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).*

(b) *The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in [section 6], the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with [section 5]. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.*

~~(5)~~(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.”

Section 2. Big sky economic development program — definitions.

(1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in [section 6].

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under [sections 2 through 6].

(2) As used in [sections 2 through 6], the following definitions apply:

(a) “Certified regional development corporation” has the meaning provided in 90-1-116.

(b) “Department” means the department of commerce provided for in 2-15-1801.

(c) “Economic development organization” means:

(i) (A) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

- (B) an entity certified by the department under 90-1-116; or
- (C) an entity established by a local government; or
- (ii) an entity actively engaged in economic development and business assistance work in a region of the state.
- (d) "Local government" means a tribal government, county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.

Section 3. Purpose. The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

- (1) create good-paying jobs for Montana residents;
- (2) promote long-term, stable economic growth in Montana;
- (3) encourage local economic development organizations;
- (4) create partnerships between the state, local governments, and local economic development organizations that are interested in pursuing these same economic development goals;
- (5) retain or expand existing businesses; and
- (6) provide a better life for future generations through greater economic growth and prosperity in Montana.

Section 4. Types of financial assistance available. (1) The department shall provide for and make grants and loans available to local governments for economic development projects and to certified regional development corporations from the money in the economic development special revenue account provided for in [section 6].

(2) A grant or loan may not be used for a project that would result in the transfer or relocation of jobs from one part of the state to another part of the state.

Section 5. Priorities for funding — rulemaking. (1) The department must receive proposals for grants and loans from local governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that the needs of rural areas are balanced with the needs of the state's urban centers.

(b) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

- (i) local governments include but are not limited to:
 - (A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company.

(ii) a certified regional development corporation includes:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(c) The rules must provide for distribution methods for financial assistance available to local governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding. Funding may not exceed \$5,000 for each expected job. The rules must require equal matching funds for a grant or loan.

(d) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(e) A grant or loan may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees are to be principally employed.

Section 6. Economic development special revenue account. (1) There is an economic development state special revenue account. The account receives earnings from the big sky economic development fund as provided in 17-5-703. The money in the account may be used only as provided in [sections 2 through 6].

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department. Of the money that is deposited in the account that is not used for administrative expenses:

(a) 75% must be allocated for distribution to local governments to be used for job creation efforts; and

(b) 25% must be distributed to certified regional development corporations and economic development organizations that are located in a county that is not part of a certified regional development corporation.

Section 7. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; [section 6]; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 8. Fund transfer. On July 1, 2005, the amount of \$20 million is transferred from the coal severance tax permanent fund to the big sky economic development fund established in 17-5-703.

Section 9. Codification instruction. [Sections 2 through 6] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 2 through 6].

Section 10. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 589

[HB 482]

AN ACT INCREASING THE AMOUNT OF COAL SEVERANCE TAX ALLOCATED TO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE ALLOCATED BY THE LEGISLATURE FOR LOCAL IMPACTS, PROVISION OF BASIC LIBRARY SERVICES FOR THE RESIDENTS OF ALL COUNTIES THROUGH LIBRARY FEDERATIONS, AND FOR PAYMENT OF THE COSTS OF PARTICIPATING IN REGIONAL AND NATIONAL NETWORKING, CONSERVATION DISTRICTS, AND THE MONTANA GROWTH THROUGH AGRICULTURE ACT; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

“15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the~~ The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) ~~For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the~~ The amount of ~~7.75%~~ 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) ~~For fiscal years beginning on or after July 1, 2003, the~~ The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~For fiscal years beginning on or after July 1, 2003, the~~ The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) ~~for fiscal years beginning on or after July 1, 2003,~~ \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

- (B) \$50,000 for a small business innovative research program;
- (C) \$425,000 for certified regional development corporations;
- (D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and
- (E) \$300,000 for export trade enhancement; and

(iv) \$600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) ~~Beginning July 1, 2003, there~~ *There* is transferred annually from the interest income referred to in subsection (7)(b) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~Twelve percent~~ *The amount of 12%* of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~7.75%~~ *8.36%* must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and

losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~Twelve percent~~ *The amount of 12%* of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~7.75%~~ 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 590

[HB 493]

AN ACT REVISING THE AEROSPACE TECHNOLOGY BOND PROGRAM; CLARIFYING CONDITIONS UNDER WHICH BONDS MAY BE ISSUED; ALLOWING THE MULTIPLIER EFFECT TO BE USED IN PROJECTING TAX IMPACTS; ELIMINATING EQUIPMENT AS AN ELIGIBLE EXPENSE FOR A PROJECT; AMENDING SECTION 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-820, MCA, is amended to read:

“17-5-820. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 ~~and equipment~~ for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed \$20 million. Bond proceeds are appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements ~~or acquire the equipment~~, to contract with the city or county in which a project is located, ~~to contract with an airport authority, as defined in 67-1-101, a local port authority, as described in 7-14-1101, or a regional port authority, as described in 7-14-1102~~, to contract with a certified regional development corporation, as defined in 90-1-116, or ~~upon a determination that it is in the best interest of the project~~ to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement ~~or the acquisition of equipment upon a determination that it is in the best interest of the project~~. The plans and specifications for the infrastructure ~~and equipment~~ to be financed from the proceeds of the bonds must be approved by and be acceptable to the department following a review of the plans and specifications of the infrastructure by the architecture and engineering division of the department of administration, ~~but the~~ prepared by an engineer or architect, licensed and

bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure and the acquisition of equipment for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured if the state is not otherwise party to the contract. Infrastructure and equipment All improvements financed with bond proceeds are must be owned by the state, and the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the lease or the use of the infrastructure and equipment at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement may must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of first refusal for the purchase of any real property secured and improvements financed by the bonds at fair market value plus reimbursement to the state for any costs incurred in the issuance of the bonds. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) *It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service payments to be paid by the state for the bonds authorized by this section will be covered by the totality of the taxes generated by the aerospace transportation and technology development projects to be calculated by an economic impact analysis of the projects on state tax revenue over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to construct and implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board the following:*

(a) *evidence satisfactory to the board that each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and*

(b) *a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from each aerospace transportation and technology development project over the term of the bonds will be sufficient to pay the principal amount of and interest on the bonds issued to assist with the specific project a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property*

taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) For the purposes of this section, "equipment" means machinery used in the design, manufacture, repair, and maintenance of aerospace transportation and technology projects. In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

- (a) whether the project is eligible for financing;*
- (b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;*
- (c) the projected tax revenue report;*
- (d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and*
- (e) whether the project is in the public interest.*

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-serve basis."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2005

CHAPTER NO. 591

[HB 517]

AN ACT PROVIDING FOR THE ISSUANCE OF A MONTANA DISTILLERY LICENSE; PROVIDING THAT A LICENSE MAY BE ISSUED TO A PERSON AUTHORIZED BY FEDERAL LAW TO DISTILL LIQUOR; PROVIDING FOR THE FUNCTIONS THAT MAY BE PERFORMED BY A MONTANA DISTILLERY; PROVIDING FOR A REDUCED TAX RATE ON LIQUOR SOLD AND DELIVERED IN THE STATE BY A COMPANY THAT MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED, OR PROCESSED AND THAT SOLD NOT MORE THAN 50,000 PROOF GALLONS OF LIQUOR NATIONWIDE; PROVIDING FOR REPORTING, TAX PAYMENTS, AND

PENALTIES; AMENDING SECTIONS 16-1-404, 16-4-401, AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purpose of [sections 2 and 3], the following definitions apply:

(1) “Microdistillery” means a distillery located in Montana that produces 25,000 gallons or less of liquor annually.

(2) “Produces” means the distillation of liquor on the premises of the distillery licensee.

Section 2. Distillery license. (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 17% alcohol by weight for sale to the department or as provided in [section 3] and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in [section 3].

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, by-products, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption are not required to obtain a distillery license from the department.

Section 3. Domestic distillery. (1) A distillery located in Montana and licensed pursuant to [section 2] may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces;

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to [section 2] shall sell liquor to the department under this code, and the department shall include the distillery’s liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

(3) A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for consumption on the premises between 10 a.m. and 8 p.m. A microdistillery may not sell or give more than 2

ounces of liquor to an individual for on-premises consumption during a business day.

(b) sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if:

- (i) not more than 1 liter a day is sold to an individual; and
- (ii) the minimum retail price as determined by the department is charged.

Section 4. Section 16-1-404, MCA, is amended to read:

“16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold *more than 50,000 proof gallons but* not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) *2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.*

(2) The license tax must be charged and collected on all liquor *produced in or* brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 15-1-501, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206.”

Section 5. Section 16-4-401, MCA, is amended to read:

“16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in *[section 2]* and subsection (6) of *this section*, in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant is a resident of the state and is qualified to vote in a state election;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iv) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

(v) the corporation is authorized to do business in Montana; and

(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a); and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) ~~In~~ *Subject to [section 2],* in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a);

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 6. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; each domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$200; each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

(b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

(10) *The annual fee for a distillery is \$600.*

~~(10)~~(11) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(11)~~(12) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(12)~~(13) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 7. Reporting — tax payment — penalties. (1) Except as provided in subsection (9), a distillery licensed to do business in this state under [section 2] shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make an exact return to the department reporting the total amount of liquor samples provided with or without charge at the distillery in the previous month. The department may at any time make an examination of the distillery's books and of the premises and may otherwise check the accuracy of the return.

(2) The taxes imposed pursuant to 16-1-401 and 16-1-404 upon a distillery licensed under [section 2] are due on or before the 15th day of each month from the distiller for liquor sold during the previous month. The department shall adopt rules and provide forms for the proper allocation of taxes.

(3) If a distiller subject to the payment of the taxes provided for in 16-1-401 and 16-1-404 fails to make any return required by this code or fails to make payment of the taxes within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of taxes due the state from the delinquent distiller.

(4) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.

(5) If all or part of the tax imposed upon a distillery by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.

(6) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

(7) Any tax owed by a distiller under this code that is not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.

(8) Except as provided in subsection (9), a distiller who fails, neglects, or refuses to make the return to the department provided for in this section, refuses to allow the examinations as provided for in this section, or fails to make an accurate return in the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$1,000.

(9) A distillery for which the tax is less than \$10 a month from the sale of samples is not required to file a return or pay the tax for that month under this section.

Section 8. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [sections 1 through 3].

(2) [Section 7] is intended to be codified as an integral part of Title 16, chapter 1, part 4, and the provisions of Title 16, chapter 1, part 4, apply to [section 7].

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 592

[HB 535]

AN ACT REVISING THE TAXATION OF OIL PRODUCTION FROM STRIPPER WELLS PRODUCING 3 BARRELS A DAY OR LESS; DEFINING "STRIPPER WELL BONUS"; PROVIDING THAT STRIPPER WELL BONUS PRODUCTION IS TAXED AT 6 PERCENT OF GROSS TAXABLE VALUE IF THE PRICE OF OIL AS REPORTED BY THE WALL STREET JOURNAL IS EQUAL TO OR GREATER THAN \$38 A BARREL; AMENDING SECTIONS 15-36-303 AND 15-36-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

- (a) a well with one or more horizontal drain holes; and
- (b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) (a) "Stripper oil" means the oil produced from any well that produces *more than 3 barrels but less than 15 barrels* a day for the calendar year immediately preceding the current year if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter. ~~There is no stripper well exemption tax rate if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is more than \$38 a barrel.~~

(b) The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper well exemption" or "*stripper well bonus*" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. *Production from this type of well must be determined as provided in subsection (22)(c).*

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

- (i) miscible fluid displacement;
- (ii) steam drive injection;
- (iii) micellar/emulsion flooding;
- (iv) in situ combustion;
- (v) polymer augmented water flooding;
- (vi) cyclic steam injection;
- (vii) alkaline or caustic flooding;
- (viii) carbon dioxide water flooding;
- (ix) immiscible carbon dioxide displacement; or
- (x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%

(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) ~~first 1~~ first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) <i>stripper well bonus production</i>	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		

(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel. *If the price of oil is equal to or greater than \$38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.*

(ii) *Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 a barrel.*

~~(d)(e)~~ For the purposes of ~~subsection~~ subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Applicability. [This act] applies to oil produced and sold after June 30, 2005.

Approved May 6, 2005

CHAPTER NO. 593

[HB 584]

AN ACT CREATING THE BIG SKY ON THE BIG SCREEN ACT; PROMOTING THE MOTION PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX INCENTIVES FOR FILMING AND FOR DEVELOPING MAGAZINE ADVERTISING IN MONTANA; PROVIDING DEFINITIONS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION OF A PRODUCTION IN ORDER TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR ADMINISTERING THE TAX CREDITS; LIMITING THE TAX CREDITS THAT MAY BE CLAIMED FOR A STATE-CERTIFIED PRODUCTION; PROVIDING FOR THE ADMINISTRATION OF THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 11] may be cited as the “Big Sky on the Big Screen Act”.

Section 2. Purpose. (1) The purposes of [sections 1 through 11] are to enhance Montana’s economy by revitalizing and expanding the motion picture and television industries and related media in Montana and to promote the growth of small businesses. The objectives of [sections 1 through 11] are to:

- (a) renew interest in Montana as a premier location for the production of motion pictures, documentaries, television programs and commercials, and magazine advertising;
- (b) encourage the creation of jobs that pay well for Montana workers and university graduates;
- (c) enhance the growth of Montana businesses that provide goods and services for these types of productions; and
- (d) help promote the tourism industry in Montana.

(2) The objectives in subsection (1) will best be achieved by offering tax incentives to production companies for hiring Montana residents and for purchasing Montana goods and services.

Section 3. Definitions. As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

- (1) “Compensation” means salary, wages, or other compensation, including related benefits paid to a Montana resident.
- (2) (a) “Production” means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, television pilot, magazine advertising, other than advertising for tobacco products, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet, or other viewing.

(b) The term does not include the production of television coverage of news and athletic events or a film, video, internet production, television series, magazine advertising, or commercial that:

(i) contains any obscene material or performance as described in 45-8-201(2); or

(ii) is produced in whole or in part with money received for tobacco product placement, advertisement, or other tobacco use in the production.

(3) (a) "Production company" means a company engaged in the business of producing nationally or regionally distributed productions.

(b) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.

(4) (a) "Qualified expenditures" means expenditures in Montana made by a production company that are directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant and food expenses, location fees, lumber and construction materials, rental of production equipment and vehicles, and supplies and materials that will be used in the production.

(b) The term does not include expenditures made for goods and services obtained out of state.

(5) "Resident" or "Montana resident", for the purpose of determining eligibility for the tax credit provided under [section 7], has the meaning provided in 15-30-101.

(6) "State-certified production" means a production certified by the department of commerce as provided in [section 4] and produced by a production company that has a national or regional distribution plan, including but not limited to a major theatrical exhibition, film festival, television network, cable television programming, magazine advertising, or video or internet distribution.

Section 4. Application for state certification — approval — revocation — eligibility for tax credits — rules. (1) A production company may not receive the tax credits allowed under [sections 7 and 8] unless the production has been certified by the department of commerce, as provided in this section, and has applied to the department of revenue for the tax credits as provided in [section 6]. The certification by the department of commerce must occur within 30 days after submission of the application under this section.

(2) An application, on a form provided by the department of commerce, must be submitted by the production company to the department of commerce before the start of principal photography. The application must include:

(a) the production company's name, primary home address, business address, telephone and fax numbers, incorporation information, and federal tax identification number;

(b) the address and telephone and fax numbers of the production company's Montana office;

(c) the name of the line producer, unit production manager, or production accountant or the names of all three;

(d) a statement that the applicant meets the definition of a production company under [section 3];

- (e) the title of the production;
 - (f) the type of production;
 - (g) the proposed dates of production from preproduction to the start and completion of principal photography;
 - (h) a copy or synopsis of the production script;
 - (i) a list of the production locations;
 - (j) a statement that the proposed production:
 - (i) does not contain any material or performance that would be considered obscene under 45-8-201(2);
 - or
 - (ii) will not receive any money for tobacco product placement, advertisement, or other tobacco use in the production; and
 - (k) if the production is a feature-length film, a statement that the production will include a line in the production's film credits that the production was filmed in Montana.
- (3) The application must be signed by the manager, agent, president, vice president, or other person authorized to represent the production company.
- (4) (a) The department of commerce shall notify the applicant within 30 days of receipt as to whether the production qualifies as a state-certified production.
- (b) (i) Subject to subsection (4)(b)(ii), if the department of commerce approves the application, it shall provide a certification number to the applicant and notify the department of revenue of the approval and certification number.
- (ii) If the production is a feature-length film, the production company and the department of commerce, prior to the issuance of the certification number, shall enter into an agreement that the production company will comply with the provisions of subsection (2)(k). The agreement may provide for remedies if the production company violates the agreement.
- (5) If the department of commerce determines that the production company has violated the provisions of subsection (2)(d) or (2)(j), the department of commerce may revoke the state certification of the production. If the department of commerce revokes the state certification, the department of commerce shall notify the department of revenue. The production company has the right to a hearing under Title 2, chapter 4, part 6.
- (6) The department of commerce shall prescribe rules, including a procedure for review of that department's denial or revocation of state certification, necessary to carry out the provisions of this section.

Section 5. Submission of costs. Within 60 days of completion of principal photography, the production company shall submit a statement of all expenditures and compensation paid to Montana residents to the department.

Section 6. Application for tax credit — fee. (1) To receive the tax credits under [sections 7 and 8] for a state-certified production, a production company shall apply to the department on a form prescribed by the department. The form must be accompanied by an application fee. The application must be made and the fee paid at the time the production company files its tax return.

(2) The application fee is determined as follows:

- (a) if the total compensation paid to Montana residents for the production is less than or equal to \$30,000, the application fee is \$500;

(b) if the total compensation paid to Montana residents for the production is more than \$30,000, the application fee is \$75 for each resident employed by the production company; or

(c) if the production company is applying only for the qualified expenditure tax credit, the application fee is \$500.

(3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated, as provided in 17-7-502, in equal amounts to the department of revenue and the department of commerce to administer the provisions of [sections 6 through 11].

Section 7. Employment production tax credit. (1) Subject to [section 9], a production company that has submitted an application for a tax credit and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the production company's tax year is equal to the sum of 12% of the first \$50,000 or less of actual compensation paid to each Montana resident employed in connection with the state-certified production during the tax year.

(3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list of all cast and crew participating in the production and the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in [section 4].

(4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding tax years. However, the credit may not be carried forward to the extent that the credit in the tax year that the credit is received exceeds the limitation under [section 9].

(5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application.

Section 8. Tax credit for qualified expenditures. (1) Subject to [section 9], a production company that has submitted an application and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is

equal to 8% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in [section 4]. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

Section 9. Limitation on amount of credits. The total amount of the credits allowed under [sections 7 and 8] may not exceed \$1 million for each state-certified production.

Section 10. Denial of claim for credit — recapture. A taxpayer whose state-certified production has been revoked as provided in [section 4(5)] may not claim the credits allowed under [sections 7 and 8]. If the department of commerce revokes the state certification of a production company after the production company has taken a credit under [section 7 or 8], the production company shall refund the amount of any credits taken. The taxpayer is subject to the penalty and interest provisions of this chapter.

Section 11. Rules. (1) The department of revenue shall adopt rules that are necessary to implement and administer [sections 6 through 11]. The department shall, in consultation with the department of commerce, develop procedures for determining compensation paid to residents and qualified expenditures for the credits allowed under [sections 7 and 8] and for taxpayer compliance with the provisions of [section 4].

(2) The department and the department of commerce shall jointly adopt rules related to the definitions in [section 3].

Section 12. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; *[section 6]*; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 13. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through 11].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Section 16. Applicability. (1) Except as provided in subsection (2), [this act] applies to state-certified productions approved after [the effective date of this act].

(2) [Sections 6 through 10] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Section 17. Termination — carryforward. [This act] terminates January 1, 2010, but an unused credit under [section 7] may be carried forward for use on returns for tax years beginning before January 1, 2014, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009.

Approved May 6, 2005

CHAPTER NO. 594

[HB 592]

AN ACT REVISING AND CLARIFYING THE DETERMINATION OF PENALTY AND INTEREST PROVISIONS APPLIED TO TAXES, FEES, AND OTHER ASSESSMENTS ADMINISTERED BY THE DEPARTMENT OF REVENUE; REVISING UNIFORM PENALTY PROVISIONS; REVISING UNIFORM INTEREST ASSESSMENTS BY USING THE GREATER OF 8 PERCENT OR THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; IMPOSING A HIGHER INTEREST RATE ON CERTAIN TAXPAYERS UNDER CERTAIN CONDITIONS; ESTABLISHING A UNIFORM INTEREST RATE APPLIED TO THE OVERPAYMENT OF TAXES OR FEES; REVISING THE ACCRUAL OF INTEREST ON UNPAID TAXES; APPLYING THE UNIFORM PENALTY AND INTEREST PROVISIONS TO CERTAIN OTHER TAXES AND FEES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-23-214, 15-30-142, 15-30-149, 15-30-209, 15-30-241, 15-30-321, 15-30-323, 15-30-1112, 15-31-111, 15-31-141, 15-31-503, 15-31-510, 15-31-531, 15-31-543, 15-35-112, 15-36-314, 15-37-102, 15-37-105, 15-37-106, 15-37-108, 15-37-114, 15-37-210, 15-38-106, 15-38-110, 15-38-111, 15-50-308, 15-51-109, 15-53-145, 15-53-146, 15-59-112, 15-60-206, 15-65-115, 15-66-206, 15-67-206, 15-68-513, AND 15-72-114, MCA; REPEALING SECTION 15-31-545, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver of penalties — interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed \$100 due upon the tax.

~~(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, as provided for in 15-30-304, the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer."~~

Section 2. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due. *The penalty accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.*

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, ~~accrued at 1% a month or fraction of a month, on the unpaid tax.~~ Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. *Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.*

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.”

Section 3. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) ~~(a)~~ A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

~~(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.~~

~~(c)~~ (2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed ~~18%~~ 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

~~(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).~~

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

~~(2)(4) (a) Interest~~ Interest on taxes not paid when due must be assessed ~~at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:~~

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. section 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(3)(5) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.~~

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

~~*(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.*~~

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Penalty and interest is calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i)."

Section 4. Section 15-23-214, MCA, is amended to read:

“15-23-214. Determination of tax — payment — penalty and interest.

(1) Subject to 15-10-420 and on or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest ~~under that section as provided in 15-1-216.”~~

Section 5. Section 15-30-142, MCA, is amended to read:

“15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$3,560, as adjusted under the provisions of subsection (7) (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$7,120, as adjusted under the provisions of subsection (7) (6), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by \$1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

~~(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.~~

~~(6)(5)~~ If the department determines that the amount of tax ~~as verified~~ due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(7)(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8)(7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year.”

Section 6. Section 15-30-149, MCA, is amended to read:

“15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon a claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the ~~taxable~~ tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes *as provided in 15-1-216*. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the ~~taxable~~ tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information

requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

- (a) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;
- (b) the overpayment results from the carryback of a net operating loss; or
- (c) the amount of interest is less than \$1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 7. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.~~

~~(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.~~

~~(4)(2)~~ A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

~~(5)(3)~~ (a) A summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.

(b) If an employer fails to honor the summons provided in subsection ~~(5)(a)~~ ~~(3)(a)~~, an additional \$100 penalty must be added to the liability.

~~(6)(4)~~ In addition to ~~any other penalty provided by law~~ *the penalties imposed by 15-1-216*, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure with a minimum of \$50.

~~(7)(5)~~ Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

~~(8)(6)~~ If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

~~(9)(7)~~ The tax lien provided for in subsection ~~(8)~~ ~~(6)~~ is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives

from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

~~(10)(8)~~ A grantor who signs and delivers to the third party an affidavit as provided in subsection ~~(9)~~ (7) is subject to the ~~penalties~~ *penalty* imposed by ~~15-30-321(1)~~ *15-1-216(3)* if any part of the affidavit is untrue. ~~The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.~~

~~(11)(9)~~ All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 8. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax — payment — exceptions — interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest ~~equal to 12% a year~~ *as provided in 15-1-216* on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period

from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 9. Section 15-30-321, MCA, is amended to read:

"15-30-321. Penalties for violation of chapter. ~~(1) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who purposely fails to file a return or files, renders, or signs a false or fraudulent return or statement or supplies false or fraudulent information is liable to a penalty of not less than \$1,000 and not more than \$5,000, to be recovered in the name of the state by action in a court of competent jurisdiction.~~

~~(2)(1)~~ An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both, at the discretion of the court.

~~(3)(2)~~ With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."

Section 10. Section 15-30-323, MCA, is amended to read:

“15-30-323. Penalty and Notice of additional assessment — penalty and interest for deficiency. (1) ~~If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.~~

~~(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment.~~

(1) If the department determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest on any deficiency assessment must be calculated from the applicable date specified in 15-30-144 for payment of the tax, with penalty and interest added as provided in 15-1-216. A certificate by the department of the mailing of the notice specified in subsection (1) is prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notice.”

Section 11. Section 15-30-1112, MCA, is amended to read:

“15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, member, or other owner who:

(a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and

(b) consents to be included in the filing.

(2) (a) Each participant’s composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant’s share of the entity’s income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity’s Montana source income to the entity’s income from all sources for federal income tax purposes.

(b) A participant’s share of the entity’s income is the aggregate of the participant’s share of the entity’s income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant’s composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments *and be subject to the underpayment interest* as prescribed by 15-30-241(5)(a) ~~computed separately for each participant on the composite tax liability~~ included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403.

(6) The composite tax is in lieu of the taxes imposed under:

(a) 15-30-103 and 15-30-105;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 12. Section 15-31-111, MCA, is amended to read:

"15-31-111. Return to be filed — penalty and interest. (1) Each corporation subject to the license tax imposed under this chapter shall for each tax period file ~~a true and~~ *an* accurate return of its net income for the tax period in the manner and form prescribed by the department of revenue. The return must contain all of the ~~facts, data, and~~ information that ~~are~~ *is* appropriate and in the opinion of the department necessary to determine the correctness of the net income ~~returned disclosed by the return~~ and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, *penalty*, and interest must be paid when the return is filed. ~~Interest~~ *Penalty and interest* must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall

make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders.”

Section 13. Section 15-31-141, MCA, is amended to read:

“15-31-141. Consolidated returns — computation and procedure — penalty and interest. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a “unitary business operation” means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its tax period in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the tax period for which a consolidated return of the affiliated group is filed.

(b) (i) A corporation is allowed an automatic extension of time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax, *penalty*, and interest must be paid when the return is filed. ~~Interest~~ *Penalty and interest* must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists."

Section 14. Section 15-31-503, MCA, is amended to read:

"15-31-503. Deficiency assessment — notice — *penalty and interest*.

(1) If the department of ~~revenue~~ determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest~~ *Penalty and interest* on any deficiency assessment ~~shall bear interest is calculated~~ from the date specified in 15-31-502 for payment of the tax. *Penalty and interest is added to the deficiency as provided in 15-1-216.* A certificate by the department of the mailing of the ~~notices~~ *notice* specified in this subsection (1) ~~shall be~~ *is* prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the ~~notices~~ *notice.*"

Section 15. Section 15-31-510, MCA, is amended to read:

"15-31-510. Estimated payments — tax returns — *penalty and*

interest. (1) ~~For corporations failing~~ *A corporation that fails* to make estimated payments according to the schedule provided in 15-31-502(2), ~~there is charged~~ *assessed interest in the amount of 12% a year as provided in 15-1-216* calculated as follows:

(a) The amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the ~~taxable~~ *tax* year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the ~~taxable~~ *tax* year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the ~~taxable~~ *tax* year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the ~~taxable~~ *tax* year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the ~~taxable~~ *tax* year in the case of the installment required to be paid in the 12th month of the ~~taxable~~ *tax* year.

(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the ~~taxable~~ *tax* year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount for any installment:

(i) take the taxable income for all months during the ~~taxable~~ tax year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the ~~taxable~~ tax year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the ~~taxable~~ tax year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding ~~taxable~~ tax years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the ~~taxable~~ tax year equals or exceeds 70%; and

(iv) the department may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) ~~Except as provided~~ *In addition to the interest assessed in subsection (1), if any tax due under this chapter is not paid when due as provided in ~~15-31-545~~ 15-31-111, by reason of extension or otherwise, penalty and interest is added to the tax due as provided in 15-1-216.*

Section 16. Section 15-31-531, MCA, is amended to read:

"15-31-531. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as ~~hereinafter~~ *provided for in subsection (3)*, interest ~~shall~~ *must* be allowed on overpayments at the same rate as is charged on delinquent taxes, *as provided in 15-1-216*, due from the due date of the return or from the date of overpayment, ~~{whichever date is later}~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. ~~No interest shall be~~

(b) *Interest is not allowed:*

(a)(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b)(ii) if the amount of interest is less than \$1.

(3)(4) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall ~~chapter is not be~~ considered an overpayment with respect to which interest is allowable."

Section 17. Section 15-31-543, MCA, is amended to read:

"15-31-543. Penalties Forfeiture of right to engage in business — penalties. (1) ~~If a corporation fails to file a return at the time specified in 15-31-502 or files a false or fraudulent return, the corporation is liable to a penalty of not more than \$5,000 to be recovered by an action in a court of competent jurisdiction.~~

(2)(1) A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as a corporation until the license ~~fee~~ tax, together with all penalties, interest, and costs, is paid. The forfeiture may be enforced by proper proceedings in court.

(3)(2) Each officer or employee of any corporation or other person who, without fraudulent intent, fails to file, sign, or verify any return or to supply any information within the time required by the provisions of this chapter is liable for the penalty imposed by 15-1-216. The department shall assess and collect any penalty in the same manner as is provided in this chapter with regard to delinquent taxes."

Section 18. Section 15-35-112, MCA, is amended to read:

"15-35-112. Deficiency assessment — review — penalty and interest.

(1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ *Penalty and interest must be added to any deficiency assessment must bear interest as provided in 15-1-216."*

Section 19. Section 15-36-314, MCA, is amended to read:

"15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest. (1) If the department determines that the amount of the tax due, ~~including the amount due for the local government severance tax,~~ is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) ~~Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January~~

~~1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-332.~~

(3)(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216.”

Section 20. Section 15-37-102, MCA, is amended to read:

“15-37-102. Gross value of metal mine yield — ~~computation~~ — definitions. As used in this part, the following definitions apply:

(1) “Gross value of product” means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals or precious and semiprecious gems and stones extracted or produced each reporting period from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from the mine or mining property or from tailings resulting from the smelting, reduction, or treatment of the ores; and

(2) “reporting period” means:

~~(a) for periods beginning prior to January 1, 2003, the calendar year; and~~

~~(b) for periods beginning on or after January 1, 2003, the 6-month period ending June 30 or December 31, as applicable.”~~

Section 21. Section 15-37-105, MCA, is amended to read:

“15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103. ~~For the reporting period defined in 15-37-102(2)(a), the tax is due and payable on or before March 31 of each year. For the reporting periods defined in 15-37-102(2)(b), the tax is due at the end of the reporting period, and for the reporting period ending June 30, the tax is payable by August 15, and for the reporting period ending December 31, the tax is payable by March 31. The tax is imposed on the products produced in the reporting period.~~

~~(2) The tax due under this part becomes delinquent as of:~~

~~(a) midnight on March 31 for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b); and~~

~~(b) midnight on August 15 for each reporting period ending June 30 under 15-37-102(2)(b).~~

(3)(2) If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest as provided in 15-1-216.

~~(4)(3)~~ If ~~any~~ a person has sold or otherwise disposed of any of the mine’s products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine’s product *that was* sold or disposed of substantially below the market price. The gross value must be based upon the quotations of the price of the mine’s product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by ~~some~~ *an* established authority or market report, such as the Engineering and Mining Journal of New York, or ~~some~~ other standard publication, giving the market reports for the reporting period covered by the statement. If there is no quotation covering ~~any~~ a particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or

otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable.”

Section 22. Section 15-37-106, MCA, is amended to read:

“15-37-106. Procedure in case of failure to file statements. If a person fails, ~~refuses, or neglects to make and~~ file the required statement of gross yield for a reporting period on or before the date the tax becomes delinquent under ~~15-37-105~~ 15-37-108, the department shall, immediately after the time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross value of product of the person from the business during the reporting period for which the license tax is to be paid. The department shall ~~make and~~ file a statement showing the amount of the gross value of product and shall ~~ascertain, determine, compute, and~~ assess the amount of the license taxes due from ~~and to be paid by~~ the person. The department shall, as soon as possible, give notice to the person in the same manner as though the statement had been filed within time. The department shall ~~proceed to~~ collect the license tax, along with the same penalty and interest as provided for other delinquencies in 15-1-216.”

Section 23. Section 15-37-108, MCA, is amended to read:

“15-37-108. Delinquent taxes — penalty and interest. All license taxes assessed under the provisions of this part become delinquent if not paid on or before midnight of the date *that the tax is payable as established for the applicable reporting period* in 15-37-105~~(2)~~(1). The department shall add to the amount of delinquent metalliferous mines tax penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206.”

Section 24. Section 15-37-114, MCA, is amended to read:

“15-37-114. Deficiency assessment — review — penalty and interest. (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ *Penalty and interest must be added to* any deficiency assessment ~~must bear interest~~ as provided in 15-1-216.”

Section 25. Section 15-37-210, MCA, is amended to read:

“15-37-210. Deficiency assessment — review — penalty and interest. (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ *Penalty and interest must be added to* any deficiency assessment ~~must bear interest~~ as provided in 15-1-216.”

Section 26. Section 15-38-106, MCA, is amended to read:

“15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before ~~March 31~~ *the due date of the annual statement established in 15-38-105*, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the

department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

(d) \$150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached \$100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

(e) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007—sec. 10, Ch. 586, L. 2001.)

15-38-106. (Effective July 1, 2007) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before ~~March 31~~ *the due date of the annual statement established in 15-38-105*, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the

CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

(d) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 27. Section 15-38-110, MCA, is amended to read:

"15-38-110. Deficiency assessment — review — penalty and interest.

(1) ~~When~~ *If* the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ *Penalty and interest must be added to* any deficiency assessment ~~shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return as provided in 15-1-216."~~

Section 28. Section 15-38-111, MCA, is amended to read:

"15-38-111. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* be allowed on overpayments at the same rate as is charged on deficiency assessments provided in ~~15-38-110~~ *15-1-216* due from the due date of the return or from the date of overpayment, (whichever date is later), to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *that* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall ~~chapter is not be~~ considered an overpayment with respect to which interest is allowable."

Section 29. Section 15-50-308, MCA, is amended to read:

"15-50-308. Estimation of tax upon failure to file statement or pay tax — *penalty and interest* — notice. (1) If a person fails, ~~neglects, or refuses~~ to file the statement required by 15-50-206 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department shall ~~proceed to inform itself~~ *determine* as best it may regarding the total gross income of the person from its contracting business within this state during the quarter.

(2) The department shall compute the amount of license taxes due, *including penalty and interest as provided in 15-1-216*, from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed."

Section 30. Section 15-51-109, MCA, is amended to read:

"15-51-109. Deficiency assessment — review — *penalty and interest*.

(1) ~~When~~ *If* the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ *Penalty and interest must be added to* any deficiency assessment ~~must be computed~~ as provided in 15-1-216."

Section 31. Section 15-53-145, MCA, is amended to read:

"15-53-145. Deficiency assessment — review — interest — penalty.

(1) If the department determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek a review of the determination pursuant to 15-1-211.

(2) ~~(a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.~~

~~(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10% *Penalty and interest* must be added to the amount of the any deficiency assessment as provided in 15-1-216."~~

Section 32. Section 15-53-146, MCA, is amended to read:

"15-53-146. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of overpayment must be credited against any tax, penalty, or interest then due from the taxpayer, with the balance being refunded to the taxpayer or its successor through reorganization, merger, consolidation, or its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments under ~~15-53-145~~ *15-1-216* due from the date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves crediting or refunding the payment.

(3) (a) Interest may not accrue during any period of processing a claim for a refund delayed more than 30 days by reason of failure of the taxpayer to provide information requested by the department for the purposes of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is credited or refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever date is later; or

(ii) if the amount of interest is less than \$1.”

Section 33. Section 15-59-112, MCA, is amended to read:

“15-59-112. Deficiency assessment — review — *penalty and interest*.

(1) ~~When~~ *If* the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, as provided in 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest~~ *Penalty and interest* must be added to ~~the~~ *any* deficiency assessment as provided in 15-1-216.”

Section 34. Section 15-60-206, MCA, is amended to read:

“15-60-206. (Temporary) Deficiency assessment — *penalty and interest* — hearing.

(1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If ~~no~~ *a* protest is ~~not~~ filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If ~~such~~ *a* protest is filed, the department shall reconsider the proposed assessment and, if the facility has ~~so~~ requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented ~~in the event of~~ *at* an oral hearing, the department’s action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment, ~~and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on~~ *Penalty and interest must be added to* any deficiency assessment ~~bears interest from the date specified in 15-60-203 for~~ payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices *as provided in 15-1-216*. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler’s comment.)”

Section 35. Section 15-65-115, MCA, is amended to read:

“15-65-115. Failure to pay or file — penalty and interest — review — interest. (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. ~~The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on~~ *Penalty and interest must be added to any deficiency assessment must be computed* as provided in 15-1-216.”

Section 36. Section 15-66-206, MCA, is amended to read:

“15-66-206. (Temporary) Deficiency assessment — penalty and interest — hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the hospital a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the hospital may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the hospital has requested, shall grant the hospital an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department’s action upon the protest is final when it mails notice of its action to the hospital.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand for payment to the hospital, ~~and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Any~~ *Penalty and interest must be added to any deficiency assessment bears interest as provided in 15-1-216* from the date specified in 15-66-201 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notice. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, 2005—sec. 20, Ch. 390, L. 2003.)”

Section 37. Section 15-67-206, MCA, is amended to read:

“15-67-206. (Temporary) Deficiency assessment — penalty and interest — hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the intermediate care facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the intermediate care facility may

file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fee liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the intermediate care facility has requested it, shall grant the intermediate care facility an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the intermediate care facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the intermediate care facility ~~and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on Penalty and interest must be added to any~~ deficiency assessment *and* accrues from the date specified in 15-67-201 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)

Section 38. Section 15-68-513, MCA, is amended to read:

“15-68-513. Examination of return — adjustments — *penalty and interest* — delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to 15-68-502 constitutes the tax to be paid.

(2) (a) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department ~~within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return~~ unless the taxpayer files a timely objection as provided in 15-1-211.

(b) *Penalty and interest must be added to any deficiency assessment as provided in 15-1-216.*

(3) If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

~~(3)~~(4) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address.

~~(4)~~(5) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.”

Section 39. Section 15-72-114, MCA, is amended to read:

“15-72-114. Interest ~~Penalty and interest on deficiency — penalty.~~ (1) Interest accrues on unpaid or delinquent taxes *Penalty and interest must be added to any deficiency assessment as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.*

~~(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the~~

~~taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency."~~

Section 40. Repealer. Section 15-31-545, MCA, is repealed.

Section 41. Coordination instruction. If House Bill No. 158 is passed and approved and if it includes a section that amends 15-30-209, then [section 7 of this act] that amends 15-30-209 is void.

Section 42. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Section 3] is effective January 1, 2007.

Section 43. Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed.

Approved May 6, 2005

CHAPTER NO. 595

[HB 667]

AN ACT CREATING A SMALL BUSINESS HEALTH INSURANCE POOL; PROVIDING FOR EMPLOYER PREMIUM INCENTIVE PAYMENTS, EMPLOYEE PREMIUM ASSISTANCE PAYMENTS, AND TAX CREDITS TO BE ADMINISTERED BY THE COMMISSIONER OF INSURANCE FOR ELIGIBLE SMALL EMPLOYERS WHO PROVIDE CERTAIN GROUP HEALTH PLAN COVERAGE FOR THEIR ELIGIBLE EMPLOYEES; PROVIDING THAT CERTAIN ELIGIBLE SMALL EMPLOYERS MAY RECEIVE PREMIUM INCENTIVE PAYMENTS AND EMPLOYEES MAY RECEIVE ASSISTANCE FOR PAYING PREMIUMS FOR HEALTH INSURANCE PURCHASED THROUGH THE SMALL BUSINESS HEALTH INSURANCE POOL; ALLOWING THE TAX CREDIT TO BE CLAIMED WHEN FILING TAX RETURNS; CREATING THE SMALL BUSINESS HEALTH INSURANCE POOL BOARD OF DIRECTORS AND ESTABLISHING ITS DUTIES; PROVIDING AUTHORITY TO THE BOARD TO ESTABLISH ELIGIBILITY REQUIREMENTS FOR RECEIVING THE PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, AND TAX CREDITS; PROVIDING RULEMAKING AUTHORITY TO THE COMMISSIONER TO IMPLEMENT THE PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, AND TAX CREDITS; PROVIDING PENALTIES FOR WRONGFULLY OBTAINING PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, OR THE TAX CREDIT; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURSUE MEDICAID FUNDING FOR EMPLOYEE PREMIUM ASSISTANCE; AMENDING THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO CLARIFY FUNDING FOR PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, AND TAX CREDITS AND PROVIDING FOR CONTINGENT FUNDING; AMENDING SECTIONS 15-30-111, 15-30-303,

15-31-511, 33-22-1815, 45-6-301, AND 53-6-1201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Establishment of small business health insurance pool — intent. (1) There is established a nonprofit legal entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 through 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under [sections 1 through 9] to employees who continue to maintain enrollment in another comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees, as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all eligible employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses.

Section 2. Small business health insurance pool — definitions. As used in [sections 1 through 9], the following definitions apply:

(1) “Board” means the board of directors of the small business health insurance pool as provided for in [section 3].

(2) “Dependent” has the meaning provided in 33-22-1803.

(3) “Eligible employee” has the meaning provided in 33-22-1803.

(4) (a) “Eligible small employer” means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(5) “Group health plan” has the meaning provided in 33-22-140.

(6) “Premium” means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) “Premium assistance payment” means a payment provided for in [section 6] on behalf of eligible employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) "Premium incentive payment" means a payment provided for in [section 7(1)(b)] to eligible small employers who qualify under [section 7] to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) "Purchasing pool" means the small business health insurance pool.

(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of [sections 1 through 9].

(11) "Related employers" means persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.

(12) "Tax credit" means a refundable tax credit as provided for in [section 8].

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes.

Section 3. Board of directors — composition — appointment — compensation. (1) There is a board of directors of the small business health insurance pool, consisting of seven directors and two nonvoting members serving 3-year staggered terms and appointed in the following manner:

(a) three directors must be appointed by the commissioner, one of whom must be a person who has specialized knowledge regarding health insurance, one of whom must be a consumer representing the small business community, and one of whom must be a consumer representing the public interest;

(b) four directors must be appointed by the governor, one of whom must be a management-level individual with knowledge of state employee health benefit plans, one of whom must be a management-level individual with knowledge of medicaid services, one of whom must be a consumer representing the public interest, and one of whom must be a consumer representing the small business community.

(2) Each director is entitled to one vote on the board.

(3) The commissioner and the governor shall each appoint a representative from their respective staffs to participate in all board meetings as nonvoting members.

(4) The directors must be compensated and receive travel expenses in the same manner as members of the quasi-judicial boards under 2-15-124(7). The costs of conducting the meetings of the purchasing pool and the compensation for its board of directors must be borne by the purchasing pool.

(5) A board director or member must be replaced in the same manner as the original appointment if that board member is not actively participating in the affairs of the board.

Section 4. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;

(d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their eligible employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive payment;

(f) adopt a premium incentive payment amount that is the same for all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in [sections 6 and 8] or with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for eligible employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to [section 8] and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to [section 10]. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in [section 10], if it is in the best interests of the purchasing pool;

- (o) comply with the participation requirements provided for in 33-22-1811;
 - (p) meet at least four times annually; and
 - (q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.
- (2) The board may:
- (a) borrow money;
 - (b) enter into contracts with insurers, administrators, or other persons;
 - (c) hire employees to perform the administrative tasks of the purchasing pool;
 - (d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;
 - (e) set contribution levels for employers;
 - (f) request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium;
 - (g) seek other federal, state, and private funding sources;
 - (h) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to [section 8];
 - (i) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of eligible employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;
 - (j) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and
 - (k) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage.

Section 5. Duties of commissioner — rulemaking authority. Subject to the conditions in 53-6-1201, the commissioner shall:

- (1) adopt rules regarding the implementation of [sections 1 through 9], including rules regarding the administration of the premium incentive payments, premium assistance payments, and tax credits, the approval of qualified association health plans, and the registration process. The rules regarding tax credits may not relate to the filing of tax returns and claiming the tax credit on the tax returns.

(2) supervise the creation of the purchasing pool within the limits described in [sections 1 through 9];

(3) approve or disapprove the operating plan for the purchasing pool;

(4) if the board chooses to hire one, approve or disapprove the selection of a third-party administrator to handle the administration of the purchasing pool;

(5) with the assistance of the department of public health and human services, approve or disapprove the schedule of premium incentive payment or premium assistance payment amounts adopted by the board as provided in [section 4];

(6) approve or disapprove any contracts between a health insurance issuer and the purchasing pool;

(7) approve or disapprove all group health plans being offered by insurers through the purchasing pool;

(8) conduct periodic audits of the financial transactions conducted by the purchasing pool;

(9) allow up to 30%, or more if requested by the board and approved by the commissioner, of the available funding for the premium incentive payments and premium assistance payments to be applied to small group health plan coverage purchased through a qualified association health plan; and

(10) make applicable premium incentive payments or premium assistance payments for qualified association health plan coverage on behalf of eligible small employers and employees or direct the purchasing pool to make the payments; and

(11) approve or disapprove associations as qualified if their members consist of employers who sponsor group health plan coverage for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law.

Section 6. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid — eligibility for small group coverage — amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under [sections 1 through 9] if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under [section 8];

(b) provide or will provide a group health plan for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in [section 8]; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in gross compensation, including bonuses and commissions, from the small employer or related employer in the prior tax year.

(2) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under [sections 1 through 9]. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

(3) Except as provided in subsection (4), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

(4) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.

(5) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group.

Section 7. Filing for tax credit — filing for premium incentive payments and premium assistance payments. (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or 15-31-121.

(b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under [sections 1 through 9].

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under [sections 1 through 9] ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under [sections 1 through 9] merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under [sections 1 through 9] files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible.

Section 8. Registration — funding limitations — transfers — maximum number — waiting list — information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under [sections 1 through 9] must be registered each year with the commissioner. The commissioner shall begin taking new applications for 2006 on October 1, 2005.

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.

(d) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the

additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(e) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in [section 6] as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

(f) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits if the board requests the transfer as provided in [section 4] and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of employees and whether the employer qualifies under [section 6];

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in [section 10], the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions.

Section 9. Penalties. (1) The commissioner may, after providing an opportunity for a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of [sections 1 through 9]. Failure to pay a fine under this section results in a lien upon the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the special revenue account described in 53-6-1201.

(2) In addition to any penalty provided for in 33-1-317, the commissioner may require a person violating [sections 1 through 9] to make full restitution to the state, including interest of 10% a year from the date of loss, if a violation of [sections 1 through 9] caused a premium incentive payment or premium assistance payment to be paid or a tax credit to be issued to a person who was not entitled to it.

(3) A person who purposely or knowingly violates [sections 1 through 9] and receives a premium incentive payment or premium assistance payment or tax credit that the person is not entitled to commits the offense of theft, which is punishable as provided in 45-6-301.

(4) A person who purposely or knowingly violates [sections 1 through 9] and makes false statements, knowing those statements are not true, commits the

offense of unsworn falsification to authorities, which is punishable as provided in 45-7-203.

(5) Any fines or restitution collected pursuant to this section must be deposited in the special revenue account in 53-6-1201 and dedicated to the payment of premium incentive payments and premium assistance payments or tax credits or funding new programs to assist eligible small employers with the cost of providing health insurance benefits.

Section 10. Health insurance premium assistance — legislative intent — application for section 1115 waiver — duties of board of directors of small business health insurance pool, commissioner of insurance, and department of public health and human services. (1) It is the intent of the legislature that the small business health insurance pool board of directors, established in [section 3], consider the option of funding a portion of the premium incentive payments on behalf of eligible small employers or premium assistance payments on behalf of eligible employees under [sections 1 through 9] to the extent possible through a section 1115 waiver demonstration project of medicaid coverage as authorized by section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(2) The department shall prepare an analysis of the section 1115 waiver for the board for its consideration in deciding whether to request that the department seek the section 1115 waiver as provided in [section 4].

(3) (a) The department, as the designated single state agency for the receipt of medicaid, may seek, if requested by the board, approval from the U.S. department of health and human services for inclusion in a section 1115 waiver for the premium incentive payments and premium assistance payments to be provided on behalf of employees eligible under [sections 1 through 9] who meet the applicable income standard established through the section 1115 waiver.

(b) The commissioner of insurance and the board shall cooperate with the department in obtaining approval for the inclusion of the premium assistance payment coverage group in a section 1115 waiver.

(4) Upon approval of a premium assistance payment coverage group through a section 1115 waiver:

(a) the eligibility of program participants for the section 1115 demonstration premium assistance coverage group must be determined by the department. The commissioner of insurance shall provide employee and other information to the department as necessary for section 1115 waiver eligibility determinations.

(b) the department may access confidential employee and employer information necessary for administration of the premium assistance payment coverage group. The commissioner shall provide employee, employer, and other information to the department as necessary for the administration of the section 1115 waiver.

(c) the commissioner of insurance and the board shall provide to the department the funds or certification necessary to provide the state match for the medicaid money to be expended on behalf of the section 1115 waiver premium incentive payment or premium assistance payment coverage groups and for the administration of the coverage groups by the department;

(d) the commissioner of insurance, the board, and the department shall cooperate in the adoption of administrative rules necessary for the implementation of the premium incentive payments and premium assistance payments. The department shall adopt rules for the implementation of medicaid

coverage for employees participating in the program as provided in the conditions for the waiver.

(e) the commissioner and the board shall cooperate with the department to ensure that expenditures of medicaid money are made in accordance with the requirements of federal law and the approval for the section 1115 waiver.

(5) The department may coordinate or include the authorization to seek the waiver granted by this section with any other authority granted to the department in this part to seek section 1115 waivers.

Section 11. Tax credit for health insurance premiums paid — eligible small employers — pass-through entities. (1) There is a tax credit, determined under [sections 1 through 9], for eligible small employers who are individuals against the taxes imposed in 15-30-103 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan as defined in [section 2].

(2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

Section 12. Tax credit for health insurance premiums paid — eligible small employers — corporations. There is a tax credit, as determined under [sections 1 through 9], for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan as defined in [section 2].

Section 13. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between

the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical

expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; *and*

(r) *that part of the refundable credit provided in [section 6] that reduces Montana tax below zero.*

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is

employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

Section 14. Section 15-30-303, MCA, is amended to read:

“15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer’s authorized representative of a certified copy of any return or report filed in connection with the taxpayer’s tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers’ payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in [sections 1 through 9]."

Section 15. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4); or

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in [sections 1 through 9].

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is

subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction."

Section 16. Section 33-22-1815, MCA, is amended to read:

"33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

- (1) It contains at least 51 eligible employees.
- (2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with at least 51 eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.
- (3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.
- (4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).
- (5) It does not assume any risk or form self-insurance plans among its members.
- (6) (a) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool must rate the entire *purchasing pool* group as a whole and charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.
(b) ~~Rates~~ *Except for the rates for the small business health insurance pool established in [section 1], rates for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.*
(c) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool; *or by member employers, or by eligible employees and their dependents.*
- (7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer."

Section 17. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; ~~or~~

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

(c) *purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under [sections 1 through 9] to which the person is not entitled.*

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) A person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term

not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 18. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives — *contingency*. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); and

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b).

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~or~~

(e) to fund new programs to assist *eligible* small ~~businesses~~ *employers* with the costs of providing health insurance benefits to *eligible* employees, ~~if these tax credits or programs are established by the legislature after the effective date of this section;~~

(f) *the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments, as provided in*

[sections 1 through 9], not to exceed \$600,000 in the first year or 5% for each successive year of the appropriation for the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments; and

(g) to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in [section 10].

(4) (a) The money appropriated for fiscal year 2006 for the program in subsections (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section.

(b) For each succeeding fiscal year, on or before July 1, the budget director shall calculate a balance required to sustain the program for each fiscal year of the next biennium. If the budget director certifies that the reserve balance will be sufficient, then the commissioner may expend the revenue for the program as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify the commissioner. Upon receipt of the notification, the commissioner shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 19. Contingency on expenditure. [Sections 1 through 9] may not be construed to require implementation or ongoing operation of the programs in 53-6-1201(3)(d) through (3)(g) without a line item appropriation in the general appropriations bill included for that purpose.

Section 20. Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 through 9].

(2) [Sections 10 and 19] are intended to be codified as an integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [sections 10 and 19].

(3) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 11].

(4) [Section 12] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 12].

Section 21. Effective date. [This act] is effective July 1, 2005.

Section 22. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Approved May 6, 2005

CHAPTER NO. 596

[HB 671]

AN ACT GENERALLY REVISING THE MOTOR VEHICLE LAWS; AUTOMATING AND SIMPLIFYING THE PROCESS FOR ISSUANCE OF TEMPORARY REGISTRATION PERMITS; STANDARDIZING THE LENGTH OF TEMPORARY REGISTRATION PERMITS AND THE GRACE PERIOD FOR TITLING OR REGISTERING A NEWLY ACQUIRED VEHICLE; IMPOSING A \$3 FEE FOR ISSUANCE OF CERTAIN TEMPORARY REGISTRATION PERMITS; IMPOSING A \$8 FEE FOR ISSUANCE OF A TEMPORARY REGISTRATION PERMIT TO A NONRESIDENT OR TO A PERSON VIA THE SECURE ELECTRONIC APPLICATION; AUTHORIZING CERTAIN PERSONS TO ELECTRONICALLY UPDATE DEPARTMENT RECORDS VIA AUTHORIZED AGENT AGREEMENTS; SETTING THE STANDARDS FOR AUTHORIZED AGENTS, INCLUDING MAXIMUM ALLOWABLE SERVICE OR CONVENIENCE FEES CHARGEABLE BY AUTHORIZED AGENTS; AUTHORIZING CERTAIN HEALTH CARE PROVIDERS TO ISSUE TEMPORARY DISABLED PARKING PLACARDS AND ELECTRONICALLY SUBMIT DISABLED PARKING PLACARD APPLICATION ON BEHALF OF A PATIENT; ELIMINATING CERTIFICATES OF OWNERSHIP FOR CERTAIN MANUFACTURED HOMES AND FOR MOBILE HOMES AND HOUSETRAILERS; REVISING AND CLARIFYING BUSINESS PROCESSES FOR REGISTERING AND RENEWING THE REGISTRATION OF CERTAIN VEHICLES; REVISING AND CLARIFYING CERTAIN PROVISIONS FOR ISSUANCE AND TRANSFER OF LICENSE PLATES; REVISING AND CLARIFYING SPECIAL MOBILE EQUIPMENT AND SINGLE MOVEMENT PERMITS; CLARIFYING TYPES OF VEHICLES DEALERS; REVISING COLLECTION OF DRIVER'S LICENSE FEES AND CERTAIN FUND TRANSFERS; REVISING AND CLARIFYING DRIVER RECORDS AND RECORDKEEPING REQUIREMENTS; CLARIFYING ADMINISTRATIVE HEARING PROCESS FOR CERTAIN DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTIONS 7-14-112, 10-3-1307, 15-1-101, 15-1-116, 15-1-117, 15-1-121, 15-1-122, 15-8-201, 15-8-202, 15-15-201, 15-24-301, 15-24-302, 19-6-709, 23-1-105, 23-2-502, 23-2-511, 23-2-513, 23-2-515, 23-2-616, 23-2-619, 23-2-818, 49-4-301, 49-4-302, 49-4-303, 49-4-304, 49-4-305, 61-1-104, 61-1-111, 61-1-501, 61-1-508, 61-1-513, 61-1-603, 61-3-107, 61-3-109, 61-3-201, 61-3-203, 61-3-212, 61-3-217, 61-3-218, 61-3-220, 61-3-224, 61-3-301, 61-3-302, 61-3-303, 61-3-311, 61-3-312, 61-3-313, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-321, 61-3-322, 61-3-324, 61-3-325, 61-3-331, 61-3-332, 61-3-333, 61-3-334, 61-3-335, 61-3-345, 61-3-347, 61-3-401, 61-3-402, 61-3-403, 61-3-407, 61-3-412, 61-3-415, 61-3-421, 61-3-422, 61-3-425, 61-3-426, 61-3-431, 61-3-433, 61-3-446, 61-3-456, 61-3-458, 61-3-463, 61-3-464, 61-3-474, 61-3-479, 61-3-481, 61-3-501, 61-3-503, 61-3-520, 61-3-522, 61-3-527, 61-3-529, 61-3-535, 61-3-560, 61-3-561, 61-3-562, 61-3-701, 61-3-707, 61-3-721, 61-4-101, 61-4-102, 61-4-111, 61-4-112, 61-4-121, 61-4-222, 61-4-223, 61-4-310, 61-5-103, 61-5-111, 61-5-114, 61-5-115, 61-5-121, 61-5-206, 61-5-208, 61-8-442, 61-10-222, 61-11-102, 61-11-105, 61-11-204, 61-11-210, 76-2-202, AND 76-2-302, MCA; REPEALING SECTIONS 15-16-202, 61-3-207, 61-3-209, 61-3-342, AND 61-3-526, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Customer service accounts — electronic updates or changes to motor vehicle or driver records. (1) The department may provide secure electronic applications to permit a person, for specific purposes and as determined by the department, to access or update:

(a) an electronic record of title or registration for any vehicle registered to that person; or

(b) an electronic individual Montana driving record for that person.

(2) Purposes for which a person may access or update an electronic record of title or registration for a vehicle registered to or acquired by the person may include but are not limited to:

(a) issuing a temporary registration permit for a newly acquired vehicle;

(b) renewing vehicle registration on an annual or periodic basis;

(c) updating or changing personal information, including residence or mailing addresses; and

(d) changing the anniversary date and registration period for a vehicle registered to the person.

(3) Purposes for which a person may access or update an electronic individual Montana driving record for that person may include but are not limited to the following:

(a) updating or changing personal information, including residence or mailing addresses;

(b) obtaining a copy of the person's individual Montana driving record;

(c) paying a reinstatement fee owed to the department; and

(d) applying for a replacement driver's license.

Section 2. Definitions. (1) In this title, unless the context otherwise requires, the following definitions apply:

(a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(c) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(2) For purposes of this section, "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

Section 3. Services that may be performed by authorized agent. (1) The department may authorize a person to perform, on the department's behalf,

specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under Title 23, chapter 2, parts 5, 6, and 8 or this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except where specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where a vehicle is domiciled is transferred to the county treasurer of the county where the vehicle is domiciled.

(6) As used in this section, "person" has the meaning provided in [section 2].

Section 4. Payment of fees by credit card or other commercially acceptable means. (1) The department may accept payment of any fee, tax, or penalty that the department administers by credit card, debit card, electronic funds transfer, or other commercially acceptable means.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the liability is not discharged and the person has not paid the tax, fee, or penalty until the department, its authorized agent, or the county treasurer receives payment or credit from the financial institution or credit card company responsible for making the payment or credit and as long as the payment or credit is not subsequently charged back to the state by the financial institution or credit card company. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person unless the payment or credit is subsequently charged back to the department, its authorized agent, or the county treasurer by the financial institution or credit card company.

(b) Upon notice of nonpayment, the department may charge the person who attempted the payment of the fee, tax, or penalty an additional fee not to exceed the costs of processing the claim for payment of the fee, tax, or penalty. The amount of the additional fee must be added to the fee, tax, or penalty due and must be collected in the same manner as the fee, tax, or penalty due.

(3) A person making a payment pursuant to this section shall pay any fee required by a financial institution or credit card company for the payment method used.

Section 5. Motor vehicle electronic commerce operating account. (1) There is a motor vehicle electronic commerce operating account of the enterprise fund type as provided in 17-2-102.

(2) Fees imposed for issuance of a temporary registration permit under 61-3-224 must be deposited in the account.

(3) The money in the motor vehicle electronic commerce operating account must be used by the department to pay costs directly incurred in the operation, maintenance, and enhancement of electronic commerce applications, including but not limited to payments to third-party vendors who provide services to support the applications.

Section 6. Address of record — basis for change — acknowledgment of current address and service — national change of address program.

(1) (a) Whenever a person completes and submits a department-prescribed form, application, or similar document to the department, an authorized agent, or a county treasurer under Title 23 or this title or whenever a person is issued a notice to appear for a violation of a statute or a municipal ordinance regulating the operation of motor vehicles on highways, the person shall provide the person's current address on the form, application, or similar document or to the peace officer issuing the notice to appear.

(b) By manually or digitally signing the prescribed form, application, or similar document authorizing the electronic submission of the document to the department or providing the information to a peace officer, the person acknowledges that:

(i) the address is correct;

(ii) subject to the provisions of subsection (2)(b), any official notice from the department, including an order of suspension or revocation or mail renewal notice, must be sent by prepaid first-class mail to the most recent address on:

(A) the signed form, application, or similar document; or

(B) if a conviction or bond forfeiture resulting from the notice to appear that was issued, the notice to appear; and

(iii) subject to the provisions of subsection (2)(b), the notice from the department must be considered to have been accepted by the person at that address.

(2) (a) The department may contract with the United States postal service or an authorized agent to use the national change of address system for the purpose of obtaining current address information for a person whose name appears in a motor vehicle or driver record maintained by the department.

(b) If the department receives information from the national change of address system that indicates that a person whose name appears in a record has moved to another address, the department may update its records to include the new address and, after that date or until the person notifies the department, use the new address to correspond with or notify the person by first-class mail.

Section 7. Section 7-14-112, MCA, is amended to read:

“7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to ~~61-3-321(6)(a)~~ 61-3-321(5)(a).

(2) Except as provided in subsection (6), the account must be used to provide operating funds to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and

towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any amount of money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities."

Section 8. Section 10-3-1307, MCA, is amended to read:

“10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of \$2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of \$4,500 must be assessed for the first cask designed for transport by rail and a fee of \$3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and ~~61-3-321(5)~~ *61-3-321(4)* and 61-10-127 do not apply.”

Section 9. Section 15-1-101, MCA, is amended to read:

“15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term “agricultural” refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term “assessed value” means the value of property as defined in 15-8-111.

(c) The term “average wholesale value” means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in

35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term “comparable property” means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term “credit” means solvent debts, secured or unsecured, owing to a person.

(g) (i) “Department”, except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms “gas” and “natural gas” are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term “leasehold improvements” means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term “livestock” means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) (i) The term “manufactured home” means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in 61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in

~~61-1-501~~, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term “state board” or “board” when used without other qualification means the state tax appeal board.”

Section 10. Section 15-1-116, MCA, is amended to read:

“15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate a manufacturer’s certificate of origin properly assigned to an owner or a certificate of title of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the certificate of title.

(4) (a) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall surrender the certificate of title. ~~Upon payment of the fee required in 61-3-203, the county treasurer shall:~~

~~(i) enter the transfer of interest on the electronic record of title;~~

~~(ii) issue the owner a transaction summary receipt; and~~

~~(iii) forward the statement of intent and the surrendered certificate of title to the department of justice.~~

(b) The county treasurer may not issue ~~the a~~ receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. ~~The county treasurer shall remit the fee to the department for deposit in the state general fund.~~

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement.”

Section 11. Section 15-1-117, MCA, is amended to read:

“15-1-117. Reversal of declaration — exception. (1) Before a manufactured home can be physically removed from its location, the owner shall obtain a search of the title to the land from a title insurance company in order to identify those persons or entities whose consent for removal must be obtained. The owner shall obtain permission in writing from the affected persons or entities before removing the manufactured home from its location.

(2) At least 30 days before the manufactured home is removed, the owner shall give written notice to the department and the county treasurer in which the home is currently located of the intended removal of the home. The written notice must include the written consents of the affected persons or entities identified in subsection (1). The owner may not remove the home until the written consents are received and all of the taxes that have been assessed have been paid in full to the county treasurer, *as evidenced by issuance of a tax-paid receipt allowing movement of the manufactured home under 15-24-206.*

~~(3) Within 5 days of the removal of the home, the purchaser shall make a declaration of reversal and apply for a certificate of title for the manufactured home from the department of justice in accordance with the provisions of Title 61, chapter 3, part 2."~~

Section 12. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat taxes and fees pursuant to:
 - (i) Title 23, chapter 2, part 5;
 - (ii) Title 23, chapter 2, part 6;
 - (iii) Title 23, chapter 2, part 8;
 - (iv) 61-3-317;
 - (v) 61-3-321;
 - (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
 - (vii) Title 61, chapter 3, part 7;
 - (viii) 5% of the fees collected under 61-10-122;
 - (ix) 61-10-130;
 - (x) 61-10-148; and
 - (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- ~~(e) certificate of title fees for manufactured homes pursuant to 15-1-116;~~
- (e) *certificate of title fees for manufactured homes pursuant to 15-1-116;*

~~(f)~~(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
~~(g)~~(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
~~(h)~~(h) all beer, liquor, and wine taxes pursuant to:
 (i) 16-1-404;
 (ii) 16-1-406; and
 (iii) 16-1-411;
~~(i)~~(i) late filing fees pursuant to 61-3-220;
~~(j)~~(j) title and registration fees pursuant to 61-3-203;
~~(k)~~(k) veterans' cemetery license plate fees pursuant to 61-3-459;
~~(l)~~(l) county personalized license plate fees pursuant to 61-3-406;
~~(m)~~(m) special mobile equipment fees pursuant to 61-3-431;
~~(n)~~(n) single movement permit fees pursuant to 61-4-310;
~~(o)~~(o) state aeronautics fees pursuant to 67-3-101; and
~~(p)~~(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in~~ In each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

~~(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-103(2)(b).~~

~~(ii)~~(i) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A).

~~(iii)~~(ii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A).

(b) (i) For ~~fiscal year 2004 and subsequent~~ *each* fiscal years *year*, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ (3)(a)(i)(B) and ~~(3)(a)(iii)(B)~~ (3)(a)(ii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A) and ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001.~~

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:~~

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

~~(i) for fiscal years 2002 and 2003:~~

~~Missoula County~~	~~Airport Industrial~~	~~\$4,812~~
~~Silver Bow~~	~~Ramsay Industrial~~	~~597,594;~~

~~(ii)(i) for fiscal years 2004 and year 2005:~~

Missoula County	Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

~~(iii)(ii) \$0 for all succeeding fiscal years.~~

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall

work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(13) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 13. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b)(a)~~ \$0 in fiscal years 2004 and year 2005;

~~(c)(b)~~ \$3,050,205 in fiscal year 2006; and

~~(d)(c)~~ in each succeeding fiscal year, the amount in subsection ~~(2)(c)~~ (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or ~~reregistered~~ *for which registration is renewed* pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or ~~reregistered~~ *for which registration is renewed* and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to ~~61-3-321(11)(a)~~ *61-3-321(10)(a)*, with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in ~~61-3-321(6)~~ 61-3-321(5) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;

(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in ~~61-3-321(7)~~ 61-3-321(6) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or ~~reregistered~~ *for which registration is renewed*. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 14. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department shall, between January 1 and the first Monday of August in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

(a) motor vehicles;

(b) motor homes, travel trailers, and campers;

(c) watercraft, *snowmobiles, and off-highway vehicles*;

(d) livestock;

(e) property defined in 61-1-104 as special mobile equipment that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment ~~plate~~ *decal*;

(f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and

(g) property subject to the provisions of 15-16-203.”

Section 15. Section 15-8-202, MCA, is amended to read:

“15-8-202. Motor vehicle assessment by department of justice. (1) (a) The department of justice shall determine the registration fee on light vehicles in accordance with 61-3-560 through 61-3-562.

(b) For the purposes of the local option vehicle tax under 61-3-537, the department of justice shall assess all light vehicles, ~~subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation~~ in accordance with 61-3-503.

(c) The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer’s rated capacity of more than 1 ton, and truck tractors in accordance with 61-3-528 and 61-3-529.

(d) Taxes, registration fees, or fees in lieu of tax on a motor vehicle under this subsection (1) must be assessed or imposed in each year on the person ~~who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date to whom the vehicle is registered.~~

~~(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers’ inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.~~

~~(3) “Purchasers” includes dealers who apply for registration or reregistration of motor vehicles.~~

~~(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1.~~

~~(5)~~(2) (a) The department of justice is authorized to appear in any proceeding before a county tax appeal board, the state tax appeal board, or a court that seeks to dispute an assessment made by the department pursuant to the authority granted under this section.

(b) For the purposes of proceedings before county tax appeal boards or the state tax appeal board, service of the application required under 15-15-201 must be made on the attorney general. A copy of any application giving rise to a proceeding before a county tax appeal board or the state tax appeal board must also be served on the county treasurer of the county in which the vehicle that is the subject of the proceeding was registered.”

Section 16. Section 15-15-201, MCA, is amended to read:

“15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles. (1) (a) A taxpayer who seeks to appeal the imposition of local option taxes on light

vehicles or fees in lieu of tax assessed against a motor vehicle and imposed by the department of justice under authority of 15-8-202 shall file a written application for the appeal not later than 30 days after ~~the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the~~ *appeal receipt of the mail renewal notice from the department as provided in 61-3-535*. The application must be on a form prescribed by the department of justice in consultation with the state tax appeal board.

(b) The application must include a specific explanation of the basis for the taxpayer's appeal. The basis for appeal must be related to the factors to be considered and applied by the department of justice under 61-3-503, 61-3-506, 61-3-528, and 61-3-529.

(2) (a) The treasurer of the county or municipality is not required to deposit local option vehicle taxes or fees in lieu of tax on a motor vehicle paid under protest in the special fund designated as a protest fund as required for property taxes under 15-1-402. The taxes or fees paid under protest may be reported and distributed in the same manner as those received without protest.

(b) If a refund is payable as a result of the taxpayer prevailing in a tax appeal or court proceeding concerning the protested motor vehicle taxes or fees, a refund may be made in accordance with 15-16-603.

(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed by December 1. If during its current session, a county tax appeal board refuses or fails to hear a taxpayer's application that was timely filed by December 1, then the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

(b) A motor vehicle tax appeal filed after December 1 may be held over by the board to a session in the following year. If a taxpayer's application that was timely filed after December 1 of the current session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board's final meeting for that year."

Section 17. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle ~~subject to the registration fee imposed by 61-3-560 and 61-3-561~~ that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration ~~fees as follows:~~

~~(a) The motor vehicle fee is imposed by the county in which it is located under 61-3-701.~~

~~(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.~~

~~(c) The quarterly fees are due the first day of the quarter.~~

(5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of \$35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana.”

Section 18. Section 15-24-302, MCA, is amended to read:

“15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-115, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, except:

~~(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and~~

~~(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.”~~

Section 19. Section 19-6-709, MCA, is amended to read:

“19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member’s service in the covered position is terminated. Upon termination of the member’s service, the retired member becomes eligible in the next fiscal year succeeding the member’s termination.

(4) The amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), ~~61-3-527(4)~~ 61-3-527(3), and 61-3-562(1)(b) must be distributed

proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 20. Section 23-1-105, MCA, is amended to read:

“23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in ~~61-3-321(11)(a)~~ 61-3-321(10)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and

fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.”

Section 21. Section 23-2-502, MCA, is amended to read:

“23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) “Certificate of number” means the certificate issued by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning the motorboat an identifying number and containing other information as required by the department of justice.

(2) “Dealer” means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(3) “Department” means the department of fish, wildlife, and parks of the state of Montana.

(4) “Documented vessel” means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) “Identifying number” means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(6) “Lienholder” means a person holding a security interest.

(7) “Manufacturer” means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(8) (a) “Motorboat” means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(9) “Operate” means to navigate or otherwise use a motorboat or a vessel.

(10) “Operator” means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (a) “Owner” means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(12) “Passenger” means each person carried on board a vessel other than:

(a) the owner or the owner’s representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(13) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(15) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, ~~its~~ *an* authorized agent, *as defined in [section 2]*, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of all fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(20) "Waters of this state" means any waters within the territorial limits of this state."

Section 22. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of registration decal. (1) A motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display a valid registration decal. A person may not operate or give permission for the operation of any motorboat on the waters of this state unless the motorboat is numbered and displays a valid registration decal in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on the motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for ~~30~~ 40 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and registration decal required by subsection (1) if when the motorboat is operated during those ~~30~~ 40 consecutive calendar days, a ~~bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat~~ temporary registration permit has been issued under 61-3-224 and is exhibited to a warden or other officer upon request.”

Section 23. Section 23-2-513, MCA, is amended to read:

“23-2-513. Dealer’s or manufacturer’s identifying number — premises — inspection — bond — judgment — temporary registration permit. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer’s or manufacturer’s identifying number must be displayed on a dealer’s or manufacturer’s boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer’s or manufacturer’s identifying number must include the dealer’s or manufacturer’s name and business address. Each dealer or manufacturer must have one identifying number assigned to the dealer’s or manufacturer’s business.

(3) An application for a dealer’s or manufacturer’s identifying number and a certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and registration decal, \$5;

(b) for each additional certificate of number and registration decal applied for in any application, \$2.

(4) The department of justice shall issue certificates of number for the identifying number assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (8), except that a boat may not be described in a certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer’s or manufacturer’s certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer’s or manufacturer’s identifying number must be displayed in the same manner as provided in 23-2-512(8), except that the number may be temporarily attached. The last three letters must be “DLR” for dealer and “MFR” for manufacturer. These letters must be included, respectively, in dealer or manufacturer identification numbers.

(6) A person other than a dealer or manufacturer or an employee of a dealer or manufacturer may not display or use a dealer’s or manufacturer’s identifying number. A dealer’s or manufacturer’s identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) A dealer or manufacturer or an employee of a dealer or manufacturer may not use a dealer’s or manufacturer’s identifying number for any purpose other than the purpose described in subsection (1).

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where all business records are maintained and where the dealer displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of

the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to ensure compliance with this section.

(9) To qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that the dealer sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of \$50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with the application a bond of \$5,000. The bond must be conditioned that the applicant will conduct the business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage because of the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

(11) ~~Prior to~~ Within 30 days following the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall ~~issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in 61-1-603 forward an application for certificate of title executed by the purchaser and the assigned manufacturer's certificate of origin or certificate of title for the motorboat or sailboat to the office of the county treasurer in the county where the owner resides. The temporary registration permit expires 30 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice. If the dealer is an authorized agent, as defined in [section 2], a temporary registration permit may be issued upon delivery of the motorboat or sailboat to the purchaser in accordance with 61-3-224.~~

Section 24. Section 23-2-515, MCA, is amended to read:

"23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 or 23-2-513 must display a registration decal. For this purpose the county treasurer, upon proof of payment of the fee in lieu of tax as required by ~~15-16-202 23-2-517~~ for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft, shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat or sailboat do not expire while the motorboat or sailboat remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers."

Section 25. Section 23-2-616, MCA, is amended to read:

“23-2-616. Registration and registration decal — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person unless it has been registered and a registration decal is displayed in a conspicuous place on the left side of the cowl.

(2) (a) A Montana resident who owns a snowmobile operated on public land shall register the snowmobile at the county treasurer's office in the county where the owner resides.

(b) A county treasurer shall register a snowmobile if:

(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.

(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.

(3) The owner registering a snowmobile shall pay a registration fee of ~~\$6.50 in calendar year 2004 and, in each subsequent year, \$20.50 and, if the snowmobile has previously been registered, show the county treasurer the registration receipt for the most recent year in which the snowmobile was registered.~~ Upon payment of the proper fees, including the fee in lieu of tax under 23-2-626, the treasurer shall issue a registration receipt that contains information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the application to the department of justice and shall issue to the applicant a registration decal in the style and design prescribed by the department of justice.

(5) The county treasurer may not register a snowmobile under this section unless the applicant has paid the registration fee and the fee in lieu of property tax on the snowmobile as required by ~~15-16-202~~ 23-2-626.

(6) All money collected from payment of registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund.

(8) The fee imposed in subsection (3) is a one-time fee except on change of ownership. When ownership of the snowmobile changes, the new owner shall pay the fee in subsection (3).”

Section 26. Section 23-2-619, MCA, is amended to read:

“23-2-619. Dealer registration certificate — use of fees — temporary registration permit. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer registration certificate must be issued in accordance with 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(b) To qualify as a dealer, the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all snowmobiles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any snowmobile offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of snowmobiles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of snowmobiles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in snowmobiles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in snowmobiles.

(2) The dealer application must be accompanied by an application fee of \$5 and a registration fee of \$5. Upon receipt of the dealer application and payment of fees, the dealer must be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year or pay an additional \$50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of \$2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) ~~Prior to~~ *Within 30 days following* the delivery of a snowmobile to the purchaser, the dealer shall ~~issue and affix to the snowmobile a temporary registration permit forward an application for certificate of title, executed by the purchaser, and the assigned manufacturer's certificate of origin or certificate of title for the snowmobile to the office of the county treasurer for the county in which the owner resides. The temporary registration permit expires 20 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice. If the dealer is an authorized agent, as defined in [section 2], a temporary registration permit may be issued upon delivery of the snowmobile to the purchaser in accordance with 61-3-224.~~

(9) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund."

Section 27. Section 23-2-818, MCA, is amended to read:

"23-2-818. Dealer registration certificate — temporary registration permit. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless the dealer has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership

owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of \$5 and a registration fee of \$5. To qualify for the fees in this subsection, the applicant for renewal shall certify that the applicant has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of \$2 each.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional \$50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) ~~Prior to~~ *Within 30 days following the* delivery of an off-highway vehicle to a purchaser, the dealer shall issue and affix to the off-highway vehicle a ~~temporary registration permit, as defined in 61-1-602~~ *forward an application for certificate of title, executed by the purchaser, and the assigned manufacturer's certificate of origin or certificate of title for the off-highway vehicle to the office of the county treasurer for the county in which the owner resides. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice. If the dealer is an authorized agent, as defined in [section 2], a temporary registration permit may be issued upon delivery of the snowmobile to the purchaser in accordance with 61-3-224.*

(8) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the state general fund."

Section 28. Section 49-4-301, MCA, is amended to read:

"49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and ~~who, as determined by~~ *for whom a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, submits a certification to the department, by electronic or other means prescribed by the department, that the person meets one of the following criteria:*

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(11)~~ *61-3-332(9)*. If the condition exists after 6 months, a new temporary placard must be issued for the time

period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a ~~new~~ *later paper or electronic* certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 29. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under 61-3-458(3)(b) or displaying a wheelchair as provided in ~~61-3-332(11)~~ 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458(3)(b) or displaying a wheelchair as provided in ~~61-3-332(11)~~ 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 30. Section 49-4-303, MCA, is amended to read:

"49-4-303. ~~Applications for Issuance of interim special parking permit.~~ (1) ~~Applications for a special parking permit may be made to the department of justice on forms provided by the department that require sufficient information to determine eligibility for a permit. The application must be accompanied by:~~

~~(a) a certificate from a~~ A licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, ~~describing the extent of the applicant's disability; and~~

~~(b) a fee of \$1 may issue an interim special parking permit, in a form authorized by the department, to a person who has a disability that limits or impairs the person's mobility and upon whose behalf the physician, chiropractor, or advanced practice registered nurse has submitted a request for a special parking permit under 49-4-301. The interim special parking permit is valid only in Montana, may not be renewed or extended, and expires 5 days from the date of issuance.~~

~~(2) Applications must be available at the office of the county treasurer in each county and directly from the department."~~

Section 31. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) ~~Unless Except as authorized in 49-4-303, unless~~ the department of justice issued a special license plate under ~~61-3-332(11)~~ 61-3-332(9) or 61-3-458(3)(b) indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards

described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under ~~49-4-303~~ *49-4-301*, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 32. Section 49-4-305, MCA, is amended to read:

"49-4-305. Expiration of permit. (1) Except as provided in ~~49-4-303~~ and subsection (2) *of this section*, a *special parking* permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, certifies that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met."

Section 33. Section 61-1-104, MCA, is amended to read:

"61-1-104. Special mobile equipment. (1) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this section is partial and does not exclude other vehicles that are within the general terms of this section *as determined by the department*.

(2) For purposes of Title 61, chapter 3, and Title 61, chapter 10, part 2, a motor vehicle or a trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment.

(3) For registration purposes, a log loader must be treated as special mobile equipment, subject to the identification and registration exemptions and regulations in 61-3-431."

Section 34. Section 61-1-111, MCA, is amended to read:

"61-1-111. Trailer. (1) "Trailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, except that as used in chapters 3 and 4 the term includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(2) The term does not include a mobile home or a manufactured home, as defined in 15-1-101."

Section 35. Section 61-1-501, MCA, is amended to read:

"61-1-501. Mobile home or housetrailer. ~~"Mobile home" or "housetrailer" means a trailer or a semitrailer that is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer but that is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier has the meaning provided in 15-1-101."~~

Section 36. Section 61-1-508, MCA, is amended to read:

"61-1-508. Registration — register. ~~"Registration" or "register" means, as used in part 1, chapter 6, registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records."~~

Section 37. Section 61-1-513, MCA, is amended to read:

"61-1-513. Manufactured home. ~~(1) "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards has the meaning provided in 15-1-101.~~

~~(2) A manufactured home does not include a mobile home, as defined in 61-1-501 or 15-1-101, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976."~~

Section 38. Section 61-1-603, MCA, is amended to read:

"61-1-603. Temporary registration permit. ~~"Temporary registration permit" means:~~

~~(1) a paper record: produced and issued by the department, its authorized agent, a county treasurer, or a law enforcement officer to a person to whom ownership of a vehicle was transferred that, when mounted in the left hand corner of a rear window of a motor vehicle or affixed as prescribed on a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle, authorizes the operation of the vehicle for a specified time period prior to registration under 23-2-512, 23-2-616, 23-2-804, or 61-3-303 (1) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:~~

~~(a) required vehicle and owner information; and~~

~~(b) the purpose for which the record was generated; or and~~

~~(2) a durable license plate-style placard approved by the department and issued by an authorized agent of the department or a county treasurer to a~~

person to whom ownership of a vehicle has been transferred that, when attached to the rear of the vehicle in a manner prescribed by the department, authorizes the operation of a motor vehicle for a specified time period prior to registration under 61-3-303 *that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.*"

Section 39. Section 61-3-107, MCA, is amended to read:

"61-3-107. Identification number for trailers, campers, and other vehicles. (1) A trailer, semitrailer, ~~house trailer,~~ or camper that does not have a manufacturer's or other identifying number on the trailer, semitrailer, ~~house trailer,~~ or camper must be assigned an identification number by the department.

(2) The department may not issue ~~a certificate of ownership or a certificate of title or reissue a certificate of ownership or a certificate of title~~ covering a motor vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of \$5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) If the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for ~~a certificate of ownership or a certificate of title~~ and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any ~~certificate of ownership or a certificate of title~~ that may be issued."

Section 40. Section 61-3-109, MCA, is amended to read:

"61-3-109. Electronic title, lien filing, and registration. ~~(1)~~ The department shall develop and implement a pilot program to allow:

~~(a)(1)~~ electronic transmission of data by ~~the department's~~ *an* authorized agent, ~~or a county treasurer, or a person~~ to or from the department in lieu of the transmission of paper documents;

~~(b)(2)~~ substantiation of electronic record transactions performed by the department, ~~its~~ *an* authorized agent, ~~or a county treasurer, or a person~~;

~~(c)(3)~~ the ~~search of production and certification by a court or an authorized agent of a motor vehicle record generated from~~ electronic records of title and registration ~~maintained by the department, its agents, and county treasurers~~;

~~(d)(4)~~ electronic filing, perfection, and release of security interests or liens of record; and

~~(e)(5)~~ certification and audit by the department of its authorized agents.

~~(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and electronically maintained ownership records to subsequent purchasers, secured parties, or lienholders from the date of a lien's perfection or transfer of ownership."~~

Section 41. Section 61-3-201, MCA, is amended to read:

"61-3-201. Certificate of title required — exclusions. (1) Except as provided in subsection (2), the owner of a motor vehicle that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle.

(2) The following vehicles are exempt from the requirements of this part:

(a) a vehicle owned by the United States, unless the vehicle is registered in this state;

(b) *except as required in 61-4-111*, a vehicle that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a vehicle owned by a nonresident of this state;

(d) a vehicle regularly engaged in the interstate transportation of person or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment;

(h) a self-propelled wheelchair or tricycle used by a person with a disability;

~~or~~

(i) a dolly or converter gear;

(j) *a mobile home or housetrailer; or*

(k) *a manufactured home declared to be an improvement to real property under 15-1-116.*

~~(3) The certificate of title is valid until canceled by the department upon a transfer of any interest shown in the certificate of title, and annual renewal is not needed."~~

Section 42. Section 61-3-203, MCA, is amended to read:

"61-3-203. Fee for original certificate of title — disposition. (1) A person applying for a certificate of title shall pay *the department, its authorized agent, or a county treasurer* a fee of:

(a) ~~\$10 for issuance of an original if the vehicle for which a certificate of title is sought is not a light vehicle or a truck or bus that weighs less than 1 ton; or~~

(b) ~~\$12 if the vehicle for which application is made is a light vehicle or a truck or bus that weighs less than 1 ton. The fee must be collected by the county treasurer or by an authorized agent of the department at the time of application. An additional fee of \$2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be paid to the county treasurer or agent of the department and, of the \$10 fee,~~

(2) ~~The amount of \$5 of the fee imposed pursuant to subsection (1) must be forwarded to the department of revenue and deposited in the state general fund. The remaining \$5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550 and the remaining amount must be deposited in the state general fund."~~

Section 43. Section 61-3-212, MCA, is amended to read:

"61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of title, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection, as provided in 61-3-223. An owner may obtain a ~~72-hour~~ temporary registration permit ~~from the department or its designee under 61-3-224~~ for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications that the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of title by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee required in 61-3-203, the department shall issue a new certificate of title with the words "rebuilt salvage" on the face of the certificate of title.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a temporary registration permit has been issued as provided in subsection (1).”

Section 44. Section 61-3-217, MCA, is amended to read:

“61-3-217. Certificate of title — duties — examination of application — records check — incomplete application. (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

- (i) review the application and documents;
- (ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

- (a) the records of vehicles maintained by the department under 61-3-101;
- (b) the reported stolen vehicle databases maintained on the state’s criminal justice information network and by the national crime information center; and
- (c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the electric record of title for the vehicle and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) ~~Except as provided in 61-3-342, the~~ The department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department.”

Section 45. Section 61-3-218, MCA, is amended to read:

“61-3-218. Certificate of title — issuance — delivery. (1) Except as provided in subsection (2), if a person who applied for a certificate of title also requested the issuance of the certificate of title as provided in 61-3-216(2)(f)(i), upon receipt of the application and all supporting documents and after an examination and determination that the application is complete and regular, the department shall issue a certificate of title of the vehicle and shall mail the certificate of title to the owner.

(2) If a person to whom a vehicle was transferred has not satisfied the titling and registration provisions of this chapter or, if applicable, the registration provisions of Title 23, chapter 2, part 5 or 6, within the ~~20-day~~ 40-day period provided in 61-3-220(3) and the secured party or lienholder pays the title fee required in 61-3-203, the department may mail a certificate of title to the secured party or lienholder upon request of the secured party or lienholder.

(3) (a) A vehicle owner who requested the delayed issuance of a certificate of title under 61-3-216(2)(f)(ii), in the initial application for a certificate of title, may submit a request for the issuance of the certificate of title to the department, its authorized agent, or a county treasurer in a manner prescribed by the department. Upon receipt, the department shall issue a certificate of title for the vehicle and mail the certificate of title to the owner.

(b) A title fee may not be demanded from the owner or collected by the department, its authorized agent, or a county treasurer for a certificate of title requested or issued under subsection (3)(a).”

Section 46. Section 61-3-220, MCA, is amended to read:

“61-3-220. Certificate of title — voluntary transfer — ~~timeliness —~~ penalty duties. (1) Upon the voluntary transfer of any interest in a motor vehicle for which a certificate of title was issued under the provisions of this chapter, the owner whose interest is to be transferred shall:

(a) authorize, in writing and on a form prescribed by the department, ~~its an~~ authorized agent, or a county treasurer, to enter the transfer of the owner’s interest in the vehicle to the transferee on the electronic record of title maintained under 61-3-101; or

(b) execute a transfer in the appropriate space provided on the certificate of title issued to the owner and deliver the assigned certificate of title to:

(i) the transferee at the time of delivery of the vehicle; or

(ii) the department, its authorized agent, or a county treasurer if an application for a certificate of title has been completed by the transferee and accompanies the assigned certificate of title.

(2) The transferor’s signature on the certificate of title, or the form authorizing transfer of interest upon the electronic record of title, must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee or authorized agent of the department, or a notary public.

(3) Except as provided in ~~sections 23-2-513, 23-2-610, 23-2-818, or~~ 61-4-111, the person to whom an interest in a motor vehicle has been transferred shall:

(a) execute an application for a certificate of title in the space provided on the assigned certificate of title or as prescribed by the department; and

(b) within ~~20~~ 40 days after the interest in the vehicle was transferred to the person, *either*:

(i) ~~mail or deliver the assigned~~ *apply for a certificate of title or application to the county treasurer of the person's county of residence or, as permitted by the department, its authorized agent under 61-3-216 and register the vehicle under 61-3-303; or*

(ii) *subject to the limitations of 61-3-312, register the vehicle without the surrender of a previously assigned certificate of title and application for certificate of title under 61-3-303.*

(4) If the person to whom an interest in a motor vehicle has been transferred fails to submit the application for a certificate of title to the department's authorized agent or a county treasurer *comply with the requirements described in subsection (3) within the 20-day 40-day grace period described in subsection (3),* a late penalty of \$10 must be imposed against the transferee. The penalty must be paid by the transferee to the county treasurer when the application for a certificate of title is finally submitted by the transferee or before the transferee may register registers the vehicle in this state, *with or without the surrender of an assigned certificate of title.* The penalty is in addition to the fees otherwise provided by law.

(5) If the transferee does not ~~apply for a certificate of title~~ *comply with the requirements of subsection (3) within the 20-day 40-day grace period,* a secured party or lienholder of record may pay the fees for the transfer of title and for filing a voluntary security interest or lien. The secured party or lienholder is not liable for the late penalty imposed in subsection (4) or for registration fees, taxes, or fees in lieu of tax on the vehicle."

Section 47. Section 61-3-224, MCA, is amended to read:

"61-3-224. Temporary registration permit — issuance — placement — fees. (1) ~~A The department, an authorized agent, or a county treasurer or a law enforcement officer may issue a temporary registration permit under the provisions of 61-3-317. A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342 to:~~

(a) *a Montana resident who acquires a new or used motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle prior to titling and registration of the vehicle under this chapter;*

(b) *the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;*

(c) *the owner of a motor vehicle registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for the vehicle under this chapter;*

(d) *a nonresident of this state who acquires a motor vehicle in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;*

(e) *a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or*

(f) *a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.*

~~(2) An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter. A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:~~

~~(a) a Montana resident who acquires a new or used motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle prior to titling and registration the vehicle under this chapter;~~

~~(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;~~

~~(c) a nonresident of this state who acquires a motor vehicle in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or~~

~~(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.~~

~~(2) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-619, 23-2-818, 61-4-111, or 61-4-112.~~

~~(4)(3)~~ A temporary registration permit issued under subsections (1) through ~~(2)~~ this section must contain the following information:

(a) a temporary ~~registration permit control~~ plate number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the vehicle, including year, make, model, and vehicle identification number, the name ~~and address~~ of the person from whom ownership of the vehicle was transferred, the name, *mailing address*, and residence address of the person to whom ownership of the vehicle has been transferred, and the date of ~~transfer~~ issuance.

(4) A temporary registration permit for:

(a) *a motor vehicle must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and*

(b) *a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway must be plainly visible and firmly attached to the vessel or vehicle.*

(5) (a) *Except as provided in 61-3-431 and subsection (5)(b) of this section, a \$3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.*

(b) *Except as provided in 61-3-431, a fee of \$8 is imposed and must be paid upon issuance of a temporary registration permit by:*

(i) *the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a motor vehicle in this state; or*

(ii) *a person who issued a temporary registration permit using a department-approved electronic interface.*

(6) *The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in [section 5].*

(7) *If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle has been transferred, the permitholder must title and register the vehicle in this or another jurisdiction before the ownership of the vehicle may be transferred to another person."*

Section 48. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as otherwise provided in this chapter 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper ~~number~~ license plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, ~~except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear.~~

(b) *A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must display a single license plate on the rear of the vehicle.*

(c) *A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.*

(2) *A person may not purchase or display on a motor vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence where the vehicle is domiciled at the time of application for registration. However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.*

(3) *It is unlawful to:*

(a) *display license plates issued to one vehicle on any other vehicle, trailer, or semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;*

(b) *repaint old license plates to resemble current license plates; or*

(c) *display a prior design of ~~number~~ standard license plates issued under 61-3-332(4)(a) 61-3-332(3)(a) or special license plates issued under 61-3-332(10) 61-3-332(8) or 61-3-421 more than 18 months after a new design of ~~number~~ standard license plates or special license plates has been issued, except as*

provided in ~~61-3-332(4)(c) and (4)(d)~~ 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.

~~(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.~~

~~(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601.~~

~~(6)~~(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle."

Section 49. Section 61-3-302, MCA, is amended to read:

"61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden — vehicles exempt from registration — exceptions. (1) (a) ~~It shall especially be provided that a~~ A resident of the state of Montana ~~shall who owns a motor vehicle may not operate a~~ the motor vehicle ~~under a license with license plates~~ issued by any other state than Montana.

(b) *A person who has resided in Montana for more than 60 consecutive days is considered to be a resident for the purpose of vehicle titling and registration laws, and a motor vehicle, trailer, semitrailer, or pole trailer owned by the person must be titled and registered under the laws of Montana prior to operation in this state after the 60-day period.*

(2) *A motor vehicle driven or moved upon a highway in this state and owned by a nonresident of this state is exempt from registration under this chapter if:*

(a) *the vehicle is properly registered in and displays valid license plates of the jurisdiction in which the nonresident owner resides; and*

(b) (i) *the vehicle is not used for the transportation of persons or property for hire, compensation, or profit;*

(ii) *the nonresident owner is not employed or engaged in a commercial or business enterprise in this state; or*

(iii) *the vehicle is used for the exclusive purpose of filming motion pictures or television commercials and does not remain in the state for a period in excess of 180 consecutive days in a calendar year.*

(3) *A motor vehicle owned by a manufacturer, a dealer, a wholesaler, or an auto auction and that is held for sale is exempt from registration under this part, even though the motor vehicle is incidentally moved on the highway and is used for purposes of testing or demonstration or is used by a manufacturer solely for testing.*

(4) *A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven to an auto wrecking graveyard for disposal is exempt from the provisions of this chapter."*

Section 50. Section 61-3-303, MCA, is amended to read:

"61-3-303. Registration Original registration — process — fees. (1) *A Except as provided in 61-3-324, a Montana resident who owns a motor vehicle operated or driven upon the public highways of this state shall register the*

motor vehicle in the office of the county treasurer in the county where the owner permanently resides or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the county where the vehicle is permanently assigned domiciled.

(2) ~~(a)~~ Except as provided in subsection (3), the county treasurer ~~shall~~ *may* register any vehicle for which:

~~(i)~~(a) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

~~(ii)~~(b) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

~~(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.~~

(3) (a) A county treasurer ~~shall~~ *may* register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot, *due to circumstances beyond the new owner's control*, ~~present the surrender a previously issued assigned certificate of title only as authorized by the department under 61-3-342 and submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.~~

(4) ~~The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration. Upon registering a motor vehicle for the first time in this state, the county treasurer shall:~~

~~(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;~~

~~(b) assign a registration period for the vehicle under 61-3-311;~~

~~(c) determine the vehicle's age, if required, under 61-3-501;~~

~~(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5) of this section and~~

~~(e) assign and issue license plates for the vehicle under 61-3-331.~~

(5) ~~Unless otherwise provided by law, a person who seeks to register a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall pay to the county treasurer:~~

~~(a) the registration fee fees, as provided in 61-3-311 and 61-3-321 or 61-3-456;~~

(b) ~~except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees, as required for:~~

~~(i) a light vehicle under 61-3-560 through 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570 imposed against the vehicle for the current year of registration and the immediately previous year;~~

~~(ii) a motor home under 61-3-522;~~

~~(iii) a travel trailer under 61-3-523;~~

~~(iv) a motorcycle or quadricycle under 61-3-527;~~

~~(v) a bus, truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-529; or~~

~~(vi) a trailer under 61-3-530; and~~

~~(c) a donation of \$1 or more if the person has indicated on the application indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and~~

~~(d) a donation of \$1 or more if the person has indicated on the application indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.~~

~~(6) The county treasurer may not issue a registration receipt or license plates for the vehicle to the owner unless the owner makes the payments required by subsection (5). Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:~~

~~(a) the current year; and~~

~~(b) except as provided in subsection (9), the immediately preceding year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.~~

(7) The department may make full and complete investigation of the registration status of the vehicle. A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection (9)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection (9)(a) is transferred, the new owner is required to register the vehicle as if it were being

registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.”

Section 51. Section 61-3-311, MCA, is amended to read:

“61-3-311. Registration — ~~annual renewal — time periods.~~ (1) ~~Registration must be renewed annually, and registration fees must be paid annually. Except~~ *Unless a vehicle is subject to permanent registration under this title and except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526 61-3-701, and 61-3-721, and subsection (3) of this section, all registrations expire on December 31 of the year in which they are issued and must be renewed annually upon payment of all required fees to the county treasurer or the department’s agent not later than February 15 of each year the department, an authorized agent, or a county treasurer shall, upon original registration of a vehicle in this state, assign each vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the vehicle is first registered in this state and designate the calendar year in which the current registration will expire. If the ownership of a motor vehicle is transferred during the registration year, the new owner shall apply for a certificate of title and register the motor vehicle as provided by this chapter.*

~~(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3) unless:~~

~~(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or~~

~~(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.~~

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the vehicle is registered and the vehicle’s registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the vehicle’s registration decal, if the vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the vehicle’s registration decal, if the vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the vehicle to another person.

(3) (a) Upon request of the vehicle owner, a county treasurer may assign a vehicle to a registration period, as provided in 61-3-316, other than the calendar month in which the vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the calendar month in which the vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the vehicle’s registration decal.

(b) *The county treasurer shall determine fees imposed for a vehicle registered for a period between 13 and 24 months. Registration fees imposed under 61-3-321 must be applied for the entire registration period. All other registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.*

(c) *A vehicle registered under the provisions of 61-3-303(3)(b) may not be registered under this subsection (3).*

(4) *If a vehicle is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the vehicle transfers ownership of the vehicle to another person."*

Section 52. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-311(1), 61-3-314, 61-3-313 61-3-318, 61-3-526, 61-3-560, 61-3-562, and 61-3-721, the registration of a vehicle under this chapter expires on December 31 of each year and must be renewed annually upon payment of registration fees as provided in 61-3-303 and 61-3-321 on or before the last day of the month of the vehicle's registration period following the expiration of the vehicle's registration. The renewal takes effect on January 1 of each year. A person may renew a vehicle's registration by submitting full payment for the fees or taxes, required under 61-3-303, to the department, an authorized agent, or a county treasurer in any county of this state. Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained, and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid only during for the registration year period for which it is issued.

(2) The owner of a vehicle registered subject to registration renewal under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration decal of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year is considered to have renewed the vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the vehicle's registration period.

(3) The department, an authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) *the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or*

(b) *the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."*

Section 53. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered exempt from registration renewal. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state

~~except~~ *The following vehicles are exempt from the registration renewal requirements of 61-3-312:*

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

~~(2) mobile homes and motor homes;~~

~~(3) vehicles that are registered in accordance with or subject to 61-3-411 or 61-3-458(3)(b);~~

~~(4) trucks exceeding a 1-ton rated capacity;~~

~~(5) trailers, semitrailers, tractors, and buses;~~

~~(6) special mobile equipment as defined in 61-1-104;~~

~~(7)(2) motor vehicles registered as part of a fleet under 61-3-318; and~~

~~(8)(3) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733; and~~

(4) unless a transfer of ownership occurs, a travel trailer, trailer, semitrailer, pole trailer, motorcycle, or quadricycle, including a motorcycle or quadricycle registered only for off-highway use under Title 23, chapter 2, part 8, that is permanently registered."

Section 54. Section 61-3-314, MCA, is amended to read:

"61-3-314. Registration period. ~~(1) Except as provided in 61-3-315, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.~~

~~(2) There~~ *For the purposes of this chapter, there are 12 registration periods to which a vehicle may be assigned, each of which* *Each registration period commences on the first day of a calendar month. The periods are:*

~~(a)(1)~~ January 1 through January 31	1st period
~~(b)(2)~~ February 1 through February 28/29	2nd period
~~(c)(3)~~ March 1 through March 31	3rd period
~~(d)(4)~~ April 1 through April 30	4th period
~~(e)(5)~~ May 1 through May 31	5th period
~~(f)(6)~~ June 1 through June 30	6th period
~~(g)(7)~~ July 1 through July 31	7th period
~~(h)(8)~~ August 1 through August 31	8th period
~~(i)(9)~~ September 1 through September 30	9th period
~~(j)(10)~~ October 1 through October 31	10th period
~~(k)(11)~~ November 1 through November 30	11th period
~~(l)(12)~~ December 1 through December 31	12th period"

Section 55. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date — department to make rules ~~**Rules — early reregistration renewal.**~~ (1) ~~A vehicle that has been registered for any of the periods designated in 61-3-314 must be reregistered for the same period on or before the anniversary date of the initial registration unless that period is changed as provided in subsections (2) and (4).~~

~~The anniversary date for reregistration is the last day of the month for the designated registration period.~~

~~(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.~~

~~(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may permanently register the motor vehicle as provided in 61-3-562. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.~~

~~(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the of vehicles under this chapter. The rules adopted by the department pursuant to this section must also allow for:~~

~~(1) early reregistration or renewal of registration for motor vehicles that are subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, when an owner of a motor vehicle presents extenuating circumstances; and~~

~~(4)(2) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register the vehicles."~~

Section 56. Section 61-3-316, MCA, is amended to read:

"61-3-316. New registrations under staggered registration. *A Except as provided in 61-3-311, a vehicle that is registered for the first time in this state must be assigned a registration period corresponding to when the vehicle is first registered in this state. Except as provided permitted in 61-3-315, 61-3-318, and 61-3-324, the registration period for a vehicle must remain the same from year to year."*

Section 57. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. (1) ~~Except as otherwise provided in this section, the~~ *The new owner of a transferred motor vehicle has a grace period of 20 40 calendar days from the date of purchase to make application for a certificate of title and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24 month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year. However, the motor vehicle may not be operated upon the streets and highways of this state during this period unless a temporary registration permit has been issued for, and is properly displayed on, the vehicle as permitted by 61-3-224.*

~~(2) The new owner of a vehicle described in 61-3-303(9) shall make application and pay the registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously.~~

~~(2)~~(2) If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a current registration receipt or registration decal during the ~~20-day~~ 40-day period if at all times during that period, a temporary registration permit, ~~issued under 61-3-224, obtained from the county treasurer or a law enforcement officer as authorized by the department,~~ is clearly properly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle.

~~(4) Registration fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.~~

~~(5) Failure to make application for a certificate of title within the time provided in this section subjects the purchaser to a penalty of \$10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."~~

Section 58. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, ~~reregistration~~ *renewal of registration* of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, ~~\$19.75 in calendar year 2004 and, in each subsequent year,~~ \$17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) 2,850 pounds and over, \$10; and

(ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, ~~\$9 in calendar year 2004 and, in each subsequent year,~~ \$19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, ~~\$18.75 in calendar year 2004 and, in each subsequent year,~~ \$22;

(f) logging trucks less than 1 ton, \$23.75;

(g) motor homes, \$22.25;

(h) motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$9.75 in calendar year 2004 and, in each subsequent year,~~ \$11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a

proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, \$11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, ~~\$3.50 in calendar year 2004 and, in each subsequent year, \$9.75.~~ If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

~~(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.~~

~~(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.~~

~~(3)(2)~~ An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$5 in calendar year 2004 and, in each subsequent year,~~ \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

~~(4)(3)~~ A fee of \$5 ~~for each set of new number plates~~ must be collected when ~~number plates~~ *a new set of standard license plates or a new single standard license plate* provided for under 61-3-332~~(2)~~ *are* is issued.

~~(5)(4)~~ The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

~~(6)(5)~~ (a) Except as provided in 61-3-562 and subsection ~~(6)(b)~~ (5)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or ~~reregistered~~ *when registration is renewed*. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection ~~(6)(a)~~ (5)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

~~(7)(6)~~ (a) Except as provided in 61-3-562 and subsection ~~(7)(b)~~ (6)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or ~~reregistered~~ *when registration is renewed*. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

~~(8)(7)~~ The provisions of this section relating to the payment of registration fees or new number standard license plate fees do not apply when number license plates are transferred to a replacement vehicle under ~~61-3-317, 61-3-332, or 61-3-335~~. Registration fees must be paid if the vehicle to which plates are transferred was not previously registered.

~~(9)(8)~~ A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(10)(9)~~ Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(11)(10)~~ (a) Unless a person exercises the option in subsection ~~(11)(b)~~ (10)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection ~~(11)(a)~~ (10)(a). If a written election is made, the fee may not be collected."

Section 59. Section 61-3-322, MCA, is amended to read:

"61-3-322. Registration receipts — issuance. (1) Upon completion of the original registration or registration renewal process, the department, an authorized agent, or a county treasurer shall issue a registration receipt to the owner of the vehicle.

(2) The registration receipt must contain the name and address of the vehicle owner, the license plate number assigned to the vehicle, sufficient information to identify the registered vehicle and determine its registration date and period of registration, and any additional information required by rule.

(3) The registration receipt must at all times be carried in the vehicle to which it refers or must be carried by the person driving or in control of the vehicle, who shall display it upon demand of a peace officer or any officer or employee of the department or the department of transportation."

Section 60. Section 61-3-324, MCA, is amended to read:

"61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of transportation to register the fleet annually through the department of transportation in lieu of registering each motor vehicle in its domicile.

~~(2) (a) The application for~~ Except as provided in subsection (2)(b), fleet registration information, as prescribed by the department, must:

~~(a)~~ be submitted to the department of transportation prior to November 1 of each year;

~~(b)~~ include a list of the motor vehicles in the fleet;

~~(c)~~ include the current registration receipt for each motor vehicle; and

~~(d) include any other relevant information required by the department of transportation.~~

(b) The fleet owner or lessor and the department may enter into an agreement to change the registration period for the fleet in a manner that comports with the requirements of 61-3-311(3).

(3) A motor vehicle may be added to the fleet at any time during the registration period. If a certificate of title for a vehicle to be added to the fleet has not been issued by the department, the fleet owner or lessor may submit the application for certificate of title directly to the department.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to owner or lessor notifies the department of transportation the current registration receipt and the license plate for the vehicle no later than December 31 its removal. If the Upon receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why he is not able to surrender the receipt or license plate of the notice, the department shall cancel the vehicle's registration."

Section 61. Section 61-3-325, MCA, is amended to read:

~~"61-3-325. Vehicles subject to staggered Fleet registration — fees and taxes — disposition license plates.~~ *(1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.*

(2)(1) (a) The department of transportation shall compute fees and taxes due on each motor vehicle in the fleet as provided in ~~part~~ parts 3 and 5 of this chapter, based on its domicile.

(b) The department of transportation shall also collect a registration fee of \$7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain \$4.50 of each registration fee for administrative costs and forward the remaining \$3 to the state treasurer for deposit in the general fund.

(e)(b) All Unless the fleet's registration period is changed under 61-3-324, all fees and taxes must be paid no later than February 15 each year.

(2) The department may issue a separate series of license plates for fleet vehicles that have the same background as standard license plates issued under 61-3-332 but have a separate numbering system determined by the department. At the request of the fleet owner or lessor and upon payment of all applicable fees, a license plate type other than the fleet plate may be issued to a fleet vehicle."

Section 62. Section 61-3-331, MCA, is amended to read:

~~"61-3-331. Assignment of number license plates.~~ *The county treasurer shall, at the time of issuing a registration receipt under 61-3-322, assign ~~such~~ the motor vehicle a distinctive number, viz., the license plate number, and unless the license plates must be specially ordered from the department, deliver to the applicant, depending on the type of motor vehicle that was registered, a set of two license plates or one license plate, as received from the department, each of which shall must bear such the assigned distinctive numbers number. The department shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January 1 of each year."*

Section 63. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number Standard license plates. (1) ~~A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.~~

(2)(1) In addition to special license plates, collegiate license plates, and generic specialty license plates, *and fleet license plates* authorized under this chapter, a separate series of *number standard license* plates must be issued, ~~in the manner specified, for each of the following vehicle or dealer types:~~

(a) ~~passenger vehicles, including automobiles, vans, and sport utility vehicles;~~

(b) ~~motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";~~

(c) ~~trucks, bearing the letter "T" or the word "TRUCK";~~

(d) ~~trailers, bearing the letters "TR" or the word "TRAILER";~~

(e) ~~dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";~~

(f) ~~dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";~~

(g) ~~dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";~~

(h) ~~dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and~~

(i) ~~dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER"~~ *motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.*

(3)(2) (a) Except as provided in 61-3-479 and subsections ~~(3)(b)~~ (2)(b), ~~(4)(e)~~ (3)(c), and ~~(4)(d)~~ (3)(d) of this section, all ~~number standard license~~ plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, *as determined by the department*, and be furnished by the department. In years when ~~number standard license~~ plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in ~~61-3-527 or 61-3-315 and~~ 61-3-562 and vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4)(3) (a) Subject to the provisions of this section, the department shall create a new design for ~~number standard license~~ plates as provided in this section, and it shall manufacture the newly designed ~~number standard license~~ plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 ~~and 61-3-314~~, ~~number standard license~~ plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new ~~number standard license~~ plates after the existing plates have been used for a minimum period of 4 years.

(c) A ~~light~~ motor vehicle that is registered for a *13-month to a 24-month* period, as provided in ~~61-3-315 and 61-3-560~~ *61-3-311*, may display the ~~number~~ license plate and plate design in effect at the time of registration for the entire ~~24-month~~ registration period.

(d) A light vehicle described in subsection ~~(2)(b)~~ *(2)(b)* that is permanently registered may display the ~~number~~ license plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

~~(5)(4)~~ For passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on ~~the all~~ license plates, and the word "Montana" must be placed on each *license* plate. ~~Registration~~ All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

~~(6)(5)~~ The distinctive registration numbers *for standard license plates* must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, ~~and~~ generic specialty license plates, *and fleet license plates*, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

~~(7)(6)~~ For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in *61-3-560(2)(a)*, in addition to the markings provided in this section, ~~number~~ *standard license* plates must bear the following distinctive markings:

(a) For *motor* vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For *motor* vehicles that are owned by the counties, municipalities, and special districts, as defined in *18-8-202*, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for *motor* vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the ~~number~~ *standard license* plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these ~~number~~ *standard license* plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the ~~number~~ *license* plates requires it and a year number may not be displayed on the ~~number~~ plates.

~~(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.~~

~~(9)~~(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

~~(10)~~(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection ~~(6)~~ (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a motor vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

~~(11)~~(9) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall ~~maintain~~ provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate, ~~which must be attached to the registration document in the vehicle in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.~~

~~(12)~~(10) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 64. Section 61-3-333, MCA, is amended to read:

"61-3-333. Replacing number license plates or decals. (1) ~~If loss, mutilation, or destruction of number plates or a motor vehicle's registration decal occurs~~ Except as provided in subsection (2), if one or both license plates registered to a motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer or the registration decal for the motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer is mutilated or destroyed, the owner of the registered motor vehicle or trailer may obtain ~~from the department~~ replacements of the number a set of replacement license plates, a replacement license plate, or a duplicate registration decal upon filing a sworn declaration

stating that fact and payment of a fee of \$5. ~~If loss, mutilation, or destruction of pioneer plates occurs, duplicates may be obtained in the same manner upon payment of a fee of \$5.~~

(2) If the owner requests that the replacement license plates bear the same background and license plate number as the plate or plates that were destroyed or mutilated, the duplicate license plate or plates may be issued upon payment of a fee of \$5."

Section 65. Section 61-3-334, MCA, is amended to read:

"61-3-334. Expiration of registration on transfer of ownership of vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, ~~the registration of the motor vehicle shall expire and it shall be the duty of the transferor~~ *shall* immediately ~~to~~ remove the license plates from the vehicle."

Section 66. Section 61-3-335, MCA, is amended to read:

"61-3-335. Transfer of license plates to another motor vehicle. (1) ~~Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is registered, upon a form to be prepared and furnished by the department, accompanied by the original certificate of registration, for the transfer of the license plates. The application for a person may request the transfer of the license plates removed from the a motor vehicle for which originally issued under 61-3-334 to a another motor vehicle acquired or owned by the same person in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle. The use of the license plates shall may not be legalized until proper transfer of license plates has been made.~~

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. ~~The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer."~~

Section 67. Section 61-3-345, MCA, is amended to read:

"61-3-345. ~~County motor~~ Motor vehicle computer system. (1) ~~The~~ department shall maintain a statewide online computer system to be used to ~~title and register and reregister~~ motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) ~~The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:~~

~~(a) an employee of the department of administration selected by the director of the department of administration;~~

~~(b) two county treasurers, selected by the Montana county treasurers association;~~

~~(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;~~

~~(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;~~

~~(e) an employee of the department of justice, data processing division, selected by the division administrator;~~

~~(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;~~

~~(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;~~

~~(h) a member of the Montana bankers' association, selected by the association director;~~

~~(i) a member of the Montana automobile dealers association, selected by the association director; and~~

~~(j) a member or employee of the Montana American automobile association, selected by the association director.~~

~~(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.~~

~~(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.~~

~~(5) Secretarial and support services for the committee must be provided by the motor vehicle division.~~

~~(6) The committee shall meet no more than four times a year unless specifically called by the attorney general."~~

Section 68. Section 61-3-347, MCA, is amended to read:

"61-3-347. Duties of county motor vehicle computer committee. (1) The county motor vehicle computer committee shall:

(a) establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and ~~reregister~~ *renew the registration of* motor vehicles, boats, snowmobiles, and off-highway vehicles;

(b) approve the purchase of computer equipment, including peripherals, to be used for the registration and ~~reregistration~~ *renewal of the registration of* motor vehicles, boats, snowmobiles, and off-highway vehicles;

(c) approve the procedures for the development of the county motor vehicle computer system provided for in 61-3-345 and for training in the use of that system.

(2) As used in this section, "computer system" means the county motor vehicle application system and does not include the central computer centers or imply that the department of administration is responsible for establishing policy and operating and maintaining central computer centers."

Section 69. Section 61-3-401, MCA, is amended to read:

"61-3-401. Definition of personalized license plates. Personalized license plates, as used in 61-3-401 through 61-3-406, ~~mean~~ *are* license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a *are specially produced and display a specific* combination of letters or numbers, or both, *expressly* requested by the owner of the vehicle."

Section 70. Section 61-3-402, MCA, is amended to read:

“61-3-402. Personalized license plates authorized. Any A person who is the registered owner of a motor vehicle, a truck, motor home, ~~camping trailer,~~ motorcycle, quadricycle, or other vehicle for the owner’s personal use ~~registered with the department or who makes application for original registration of a motor vehicle~~ may upon payment of the fee prescribed in 61-3-406 apply to the department for personalized license plates in the manner prescribed in 61-3-405, ~~which~~ The plates ~~shall must~~ be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates ~~provided for in this chapter numbered as provided in 61-3-332.”~~

Section 71. Section 61-3-403, MCA, is amended to read:

“61-3-403. Color and design of personalized license plates — exception — county designation. (4) Except as provided in 61-3-407 and 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle *standard* license plates and must consist of numbers or letters, or any combination thereof of numbers or letters, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, *standard* or special license plate series under this title. A registration decal must be displayed on personalized license plates as provided in 61-3-332.

(2) ~~Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.”~~

Section 72. Section 61-3-407, MCA, is amended to read:

“61-3-407. Personalized license plates for disabled — special veteran and generic specialty license plates. Subject to the provisions of 61-3-405 and 61-3-406, an application for *standard license plates bearing a wheelchair as the symbol of a person with a disability under 61-3-332(9)*, special veteran license plates under 61-3-458(3), or generic specialty license plates under 61-3-472 through 61-3-481 may be combined with an application for personalized plates. The application must be made on a form supplied by the department.”

Section 73. Section 61-3-412, MCA, is amended to read:

“61-3-412. Display of original Montana license plates on collector’s item and general transportation collector’s item vehicles — definition — validation. (1) As used in 61-3-413 and this section, “original Montana license plate” means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 or 61-3-413 to display original Montana license plates, with validation as required in 61-3-413 or subsection (3) of this section, after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a \$5 fee, receipt of the highway patrol officer's certification that the officer has determined that:

(i) the license plate is legible and meets the requirements of subsection (1); and

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night;

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411 or 61-3-413; and

(d) in the case of a general transportation collector's item application, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

(3) If the owner of a vehicle ~~registered under the provisions of 61-3-314~~ meets the requirements of subsection (2), the department shall:

(a) ~~file the application and register information on the motor vehicle in the manner as prescribed in 61-3-303; and~~

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(2)(a); or

(B) "V" to designate vehicles described in 61-3-411(2)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if a windshield does not exist, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of \$20."

Section 74. Section 61-3-415, MCA, is amended to read:

"61-3-415. Special motorcycle license plates — department to design — fees — distribution. (1) A Montana resident who is the owner of a motorcycle or quadricycle titled and registered under this chapter and who pays the fee required under subsection (2) may be issued a ~~set of~~ special motorcycle license ~~plates~~ *plate* bearing a design created by the department. The design must recognize the efforts of one or more Montana-based nonprofit organizations that grant wishes to chronically or critically ill Montana children.

(2) ~~A~~ *In addition to the fee required in 61-3-527, a person requesting a set of special motorcycle license plates* *plate* under this section shall pay to the county treasurer:

(a) an administrative fee of \$5 upon ~~initial~~ issuance of the special license ~~plates~~ *plate*, to be deposited in the county general fund; and

(b) a \$5 license plate fee; and

~~(b)(c) an annual~~ *a donation fee of \$20 \$20 upon initial issuance, renewal, or transfer of the special license plates.*

(3) The county treasurer shall remit the fees required in ~~subsection (2) subsections (2)(b) and (2)(c)~~ to the department of revenue. For each ~~set of plates~~ *special plate* issued, the department of revenue shall deposit \$5 in the state

general fund and ~~\$20~~ \$20 in an account in the state special revenue fund to be used by the department as provided in subsection (4).

(4) The department shall use the money deposited in the account in the state special revenue fund as provided in subsection (3) to provide grants, using criteria established by the department, to Montana-based nonprofit organizations that grant wishes to Montana children who are chronically or critically ill.

(5) The department shall adopt rules to identify the entity or entities that may qualify for grants under this section and to establish the criteria that an entity must meet to receive grant funds.

(6) The account in the state special revenue fund provided for in subsection (3) is statutorily appropriated to the department, as provided in 17-7-502."

Section 75. Section 61-3-421, MCA, is amended to read:

"61-3-421. Amateur radio operators — special license plate. A ~~motor vehicle owner and~~ resident of this state who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, upon ~~written application on a form prescribed by the department,~~ accompanied by proof of ownership of the amateur radio station license and operator's license, ~~must~~ may be issued lettered *a set of* license plates in pairs (two identically lettered plates), in lieu of the regular license plates prescribed by law. There must be stamped or impressed upon the special license plates in clear lettering displaying the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission; ~~for a light vehicle or motor home owned by and registered to the resident. and the~~ The plates so lettered must be renewed as provided in 61-3-312."

Section 76. Section 61-3-422, MCA, is amended to read:

"61-3-422. Issuance — application — additional fee. The department shall issue lettered license plates *with the official amateur radio call letters as provided in 61-3-421* to an amateur radio operators operator upon:

(1) application showing proof that the applicant is the owner and holder of an amateur radio station license and operator's license;

(2) compliance with the state ~~motor vehicle~~ laws relating to *titling and registration and licensing of motor light vehicles and motor homes*;

(3) payment, or proof of payment, of all other fees and taxes applicable to ~~regular motor vehicle license plates~~ *the light vehicle or motor home*; and

(4) payment of a \$5 additional fee."

Section 77. Section 61-3-425, MCA, is amended to read:

"61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license. The lettered license plates, as herein provided, are in lieu of the regular license plates on the ~~motor vehicle owned by the amateur radio licensee for the period of time that issued under 61-3-422 may be renewed as long as~~ the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, ~~but no longer~~. If the official amateur radio license is revoked or expires for any reason, the license ~~plate~~ plates must be removed immediately by the owner of the ~~motor light vehicle or motor home~~, and ~~it is the responsibility of the owner to then shall obtain regular standard license plates numbered as provided in 61-3-332. If the motor light vehicle or motor home is~~

sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's licenses ~~has the right to~~ *may* transfer the ~~lettered amateur radio license~~ plates to another ~~motor light vehicle or motor home~~ owned by him upon such reasonable conditions as may be prescribed by the department ~~the holder as provided in 61-3-335~~. On the revocation or expiration of the amateur radio station and operator's licenses, the ~~lettered~~ license plates ~~as issued under 61-3-422~~ must be returned and surrendered to the department."

Section 78. Section 61-3-426, MCA, is amended to read:

"61-3-426. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued under 61-3-458(3) or with an application for special license plates issued to a person with a disability who complies with the provisions in ~~61-3-332(11)~~ 61-3-332(9).

(2) Issuance of combined license plates is subject to 61-3-422.

(3) The combined license plates must ~~be stamped with~~ *display* the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also ~~be stamped with~~ *display* the design or decal provided for in ~~61-3-332(11)~~ 61-3-332(9) or 61-3-458(3)."

Section 79. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate decal — special demonstration permit — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-4-301 through 61-4-308 or part 2 of chapter 10. Prior to movement on the highways:

(a) each piece of equipment must display an equipment identification ~~plate decal~~ or a dealer's license plate attached to the equipment, except for equipment referred to in 61-1-104(2) that is brought into Montana for demonstration purposes;

(b) each piece of equipment referred to in 61-1-104(2) that is brought into Montana for demonstration purposes must have a ~~special demonstration temporary registration~~ permit conspicuously displayed.

(2) (a) Annual application for the identification ~~plate decal~~ must be made to the county treasurer before any piece of equipment is moved on the highways. Application must be made on a form furnished by the department, together with the payment of a fee of \$5. The equipment for which a special mobile equipment ~~plate decal~~ or for which a ~~special demonstration temporary registration~~ permit is sought is subject to the assessment of personal property taxes on the date application is made for the ~~plate decal~~ or the date determined pursuant to subsection (4). The personal property taxes assessed against the special mobile equipment must be paid before a special mobile equipment ~~plate decal~~ may be issued. The fees collected under this section must be deposited in the state general fund, except that \$25 of the ~~special demonstration temporary registration~~ permit fee must be remitted to the department of transportation.

(b) Application must be made for a ~~special demonstration temporary registration~~ permit as provided in subsection (1)(b). The application must be made to the county treasurer or to ~~a weigh station~~ *an authorized agent* before

the piece of equipment is moved on Montana highways. Application for the ~~special demonstration~~ temporary registration permit must be made on a form furnished by the department and must be accompanied by the payment of a fee of \$50, *in addition to the fee required under 61-3-224.*

(3) The identification ~~plate~~ *decal* expires on December 31 of each year. If the expired identification ~~plate~~ *decal* is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification ~~plate~~ *decal* or receipt of the current year.

(4) (a) The ~~special demonstration~~ temporary registration permit expires ~~45~~ 40 days after its issuance. Special mobile equipment that remains in the state past the expiration of the permit is subject to the assessment of personal property taxes, starting on the first day following expiration of the permit.

(b) If the holder of a ~~special demonstration~~ temporary registration permit leases or sells the piece of equipment during the term that is covered by the permit, the permit is no longer valid and the special mobile equipment is subject to the assessment of personal property taxes, starting on the first day of the lease or the date of the sale.

(5) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of the owner's farming operations are exempt from this section."

Section 80. Section 61-3-433, MCA, is amended to read:

"61-3-433. Issuance of identification ~~plate~~ *decal* and receipt — contents. The county treasurer shall issue to an applicant for an equipment identification ~~plate~~ *decal* a single ~~metal plate~~ *decal* with a distinguishing number and a receipt for the fee collected; ~~which~~ The receipt ~~shall~~ must contain the name and address of the applicant, the number of the ~~plate~~ *decal* issued, the serial number of the equipment, and a brief description of that equipment."

Section 81. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under ~~61-3-332(10)~~ 61-3-332(8) or generic specialty license plates issued as provided in 61-3-472 through 61-3-481 disposes of the vehicle to which the plates are affixed, the holder may retain the plates and ~~affix~~ transfer them to another vehicle *under 61-3-335.*"

Section 82. Section 61-3-456, MCA, is amended to read:

"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.

(1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in ~~61-3-311~~ and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes or fees described in 61-3-303(5)(b);

(b) ~~assessment under 15-8-202 or 61-3-503~~, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or

(c) any of the fees provided in part 5 of this chapter.”

Section 83. Section 61-3-458, MCA, is amended to read:

“61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. *Special military or veteran license plates may not be issued for a motorcycle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.*

(2) (a) Upon application, after paying all applicable vehicle registration fees and special license plate fees and providing an official certificate from the applicant’s unit commander verifying the individual’s eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters “NG”. However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member’s branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member’s branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant’s eligibility and paying the veterans’ cemetery fee specified in 61-3-459 and all applicable vehicle registration fees under this chapter, subject

to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or former members of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 84. Section 61-3-463, MCA, is amended to read:

"61-3-463. Collegiate license plates. (1) Subject to the provisions of 61-3-332(4) 61-3-332(3) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a registration decal ~~denoting the correct county designation under as provided in 61-3-332.~~

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid."

Section 85. Section 61-3-464, MCA, is amended to read:

"61-3-464. Application for collegiate license plates. An applicant for collegiate license plates or renewal of collegiate license plates pursuant to 61-3-465 shall apply in the form and by the date the department requires. *An application for a collegiate license plate may be combined with an application for a license plate bearing a wheelchair as the symbol of a person with a disability if the applicant meets the qualifications under 61-3-332(9).*"

Section 86. Section 61-3-474, MCA, is amended to read:

"61-3-474. Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — registration decal — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, ~~the department shall provide registration decals bearing the appropriate county designation as provided in 61-3-332. The~~ a registration decal must be affixed to the license plates ~~in use in accordance with instructions by the department as provided in 61-3-332.~~

(4) The department shall maintain a list of the sponsors that have been approved to promote the sale and issuance of generic specialty license plates, the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate. The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of a sponsor's generic specialty license plate sponsorship if:

(a) the sponsor fails to comply with the provisions of 61-3-472 through 61-3-481;

(b) fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; or

(c) the department has reliable information that the sponsor is no longer qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated and a donation fee may not be charged or collected upon registration renewal of a vehicle displaying previously issued generic specialty license plates affiliated with that sponsor.

(b) A person who owns a vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's vehicle if the vehicle's registration is properly renewed in subsequent years and the plates remain legible.

(c) Following revocation of a sponsor's sponsorship status, the department may not issue *replacements or duplicates* of generic specialty license plates affiliated with that sponsor ~~that are lost~~; *if the license plates are destroyed; or mutilated.*"

Section 87. Section 61-3-479, MCA, is amended to read:

"61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the department of revenue and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any vehicle, except a trailer of any size, a motorcycle, or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern ~~number~~ *standard license* plates.

(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws that govern the issuance of ~~number~~ *standard license* plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on ~~number~~ *standard license* plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in ~~61-3-332(11)~~ *61-3-332(9)*.”

Section 88. Section 61-3-481, MCA, is amended to read:

“61-3-481. Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department in conjunction with the registration of any vehicle, except a trailer of any size, a motorcycle, or a quadricycle. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official ~~number~~ *license* plates for a motor vehicle.”

Section 89. Section 61-3-501, MCA, is amended to read:

“61-3-501. When *motor vehicle* taxes and fees are due. (1) ~~Light Motor~~ vehicle registration fees, local option vehicle taxes or fees, fees in lieu of tax, and other fees must be paid on the date of registration or ~~reregistration~~ *renewal of registration* of the *motor vehicle*.

~~(2) (a) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, light vehicle registration fees, local option vehicle taxes or fees, or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the light vehicle registration fees, local option vehicle taxes or fees, or fees in lieu of tax due and owing on the vehicle.~~

~~(b) A person selling a vehicle or trading a vehicle to a dealer shall disclose to the purchaser any amount of taxes or fees in lieu of tax that are due or past due on the vehicle at the time the person sells a vehicle or trades a vehicle to a dealer. If the disclosure is not made, the person selling the vehicle or trading the vehicle to the dealer shall pay the taxes or fees. Taxes or fees in lieu of tax that are due or past due on a vehicle at the time that a person sells or trades the vehicle to a dealer must be paid by the person who sold or traded the vehicle to the dealer, unless the person who purchases the vehicle from the dealer agrees in writing to assume the payment of those taxes or fees. This subsection (2)(b) does not apply to fleet vehicles, leased vehicles, or rental return vehicles.~~

~~(c) For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:~~

- ~~(i) a licensed new motor vehicle or used motor vehicle dealer;~~
- ~~(ii) another licensed new motor vehicle or used motor vehicle dealer;~~
- ~~(iii) a licensed wholesaler; or~~
- ~~(iv) a licensed auto auction.~~

~~(3) In the event that a vehicle's registration period is changed under 61-3-315, all light vehicle registration fees, local option vehicle taxes or fees, fees~~

~~in lieu of tax, and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle is registered. The light vehicle registration fees, local option vehicle taxes or fees, fees in lieu of tax, and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, light vehicle registration fees, local option vehicle taxes or fees, and other fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle must again be registered or reregistered and all light vehicle registration fees, local option vehicle taxes or fees, and other fees must be paid for a 12-month period.~~

(2) *Motor vehicle registration fees, fees in lieu of tax, and local option taxes or fees imposed under this chapter do not accrue after ownership of the vehicle has been transferred to another person.*

(3) (a) *For purposes of this chapter and except as provided in subsection (3)(b), the age of a motor vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.*

(b) *If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for calculating the age of the motor home under 61-3-522."*

Section 90. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) (a) ~~Except as provided in 61-3-520 and subsection (4) of this section, the following apply to the taxation of motor vehicles:~~

~~(a) For the purposes of imposing the local option vehicle tax under 61-3-537, light vehicles subject to the provisions of 61-3-313 through 61-3-316 a local option vehicle tax under 61-3-537 must be assessed the tax as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).~~

(b) A lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than \$500, the department shall value the vehicle at \$500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table:

Age of Vehicle (in years)	Type of Vehicle			
	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67

Ch. 596	MONTANA SESSION LAWS 2005				2782
6	33	57	45	57	
7	26	49	38	48	
8	21	43	32	39	
9	17	37	27	33	
10	14	31	22	29	
11	12	26	18	25	
12	10	22	15	22	
13	09	18	13	21	
14	09	15	11	19	
15	09	13	09	17	
16	09	12	09	15	

(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due under 61-3-501.

(c) If the value of the vehicle determined under subsection (2)(a) is \$500 or less, the value of the vehicle is \$500 and the value must remain at that amount as long as the vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a minimum value of \$500 is attained. The value must remain at that amount as long as the vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the vehicle.

~~(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1)."~~

Section 91. Section 61-3-520, MCA, is amended to read:

"61-3-520. Fees on vehicles used exclusively in filming motion pictures or television commercials. (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year is subject to a ~~applicable~~ registration fee under 61-3-560 and 61-3-561 fees, including one-time registration fees for vehicles subject to permanent registration or a fee in lieu of tax under this chapter as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the registration fee fees or fee fees in lieu of tax must be prorated as provided in subsection (2).

(2) (a) The registration fees or the fees in lieu of tax imposed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

(b) Fees on a vehicle imposed pursuant to this section must be collected as provided in this chapter."

Section 92. Section 61-3-522, MCA, is amended to read:

"61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay ~~a~~ *an annual fee in lieu of tax* based on the age of the motor home according to the following schedule:

less than 2 years old	\$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older	65

(2) ~~(a) Except as provided in subsection (2)(b), the~~ *The age of a motor home is must be determined by subtracting the manufacturer's designated model year from the current calendar year under 61-3-501.*

~~(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax."~~

Section 93. Section 61-3-527, MCA, is amended to read:

"61-3-527. One-time fee in lieu of tax for motorcycles and quadricycles — permanent registration. (1) ~~(a) There~~ *Except as provided in subsection (2), there* is a one-time fee in lieu of property tax of ~~\$20 in calendar year 2004 and, in each subsequent year,~~ \$40 imposed on motorcycles and quadricycles that are subject to one-time registration. The fee is in addition to registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle with ~~a~~ *a* special license plates ~~issued under 61-3-415 shall pay an annual fee based on the age of the motorcycle or quadricycle and the size of the engine, according to the following schedule:~~

~~(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:~~

~~(i) less than 5 years old, \$30;~~

~~(ii) 5 years old but less than 11 years old, \$15; and~~

~~(iii) 11 years old and older, \$6~~ *the \$40 one-time registration fee imposed under subsection (1), the \$1.25 one-time fee imposed under subsection (3), and the fees imposed under 61-3-415.*

~~(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:~~

- ~~(i) less than 5 years old, \$55;~~
- ~~(ii) 5 years old but less than 11 years old, \$20; and~~
- ~~(iii) 11 years old and older, \$6.~~

~~(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:~~

- ~~(i) less than 5 years old, \$90;~~
- ~~(ii) 5 years old but less than 11 years old, \$50; and~~
- ~~(iii) 11 years old and older, \$6.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(4)(3) A person who registers a motorcycle or quadricycle as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this subsection from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.~~

~~(5)(4) Whenever a transfer of ownership of a motorcycle or quadricycle occurs, the one-time fees required under this section must be paid by the new owner. (Subsection (4) (3) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)~~

Section 94. Section 61-3-529, MCA, is amended to read:

“61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption. (1) (a) There is ~~a~~ *an annual* fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

Age of Vehicle (in years)	Rated Capacity (in pounds)			
	16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	\$117	\$167	\$284	\$375
2	109	150	250	300
3	100	134	220	266
4	92	117	184	242
5	83	109	160	195

2785	MONTANA SESSION LAWS 2005			Ch. 596
6	75	100	134	167
7	66	91	117	147
8	58	83	100	125
9	50	75	92	109
10	41	58	79	92
11-12	33	50	67	76
13-14	28	37	52	61
15-16	25	30	38	47
17-18	18	26	29	36
19-20	13	19	22	26
21 or more	10	12	16	20

(3) The age of the vehicle ~~is must be determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due under 61-3-501.~~

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

~~(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.~~

~~(6)~~(5) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year *as determined and paid under 61-3-701.*

~~(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).~~

~~(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.~~

~~(8)~~(6) The fee in lieu of tax may not be refunded."

Section 95. Section 61-3-535, MCA, is amended to read:

"61-3-535. Vehicle ~~reregistration by mail~~ renewal — reminder notice and ~~reregistration notice~~ renewal by mail. (1) The department may allow the owner of a motor vehicle ~~to subject to renewal of registration under 61-3-312 may~~ renew the registration of a vehicle by mail or by electronic methods when the value, age, length, weight, or other criteria used to determine the tax or fee for a particular type of vehicle is available to the department by electronic means.

(2) Any mail ~~reregistration~~ *renewal* procedure developed by the department must include a procedure to facilitate automated handling of mail ~~reregistration~~ *renewal* and must provide for a written reminder notice by mail to a vehicle

owner of the requirement to ~~reregister the owner's vehicle with the county treasurer or to apply for the annual~~ *renew the vehicle's* registration decal.

~~(3) The department shall adopt rules to implement the mail reregistration and registration decal application procedure."~~

Section 96. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is ~~a~~ *an* annual registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(c) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership ~~and that are reported under 61-3-501.~~

~~(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire registration period."~~

Section 97. Section 61-3-561, MCA, is amended to read:

"61-3-561. Schedule of fees for light vehicles — limitation on fee — payment of fee required for operation. (1) The following schedule, based on vehicle age, is used to determine the annual registration fee imposed by 61-3-560:

Vehicle Age (in years)	Annual Fee
4 or less	\$195
5-10	65
11 or more	6

(2) A light vehicle subject to the registration fee imposed by 61-3-560 may not be operated unless the fee has been paid and the vehicle is licensed. A lien for fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees have been paid.

~~(3) For the purposes of this section, "vehicle age" means the~~ *The age of the light vehicle must be determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the registration fee is due under 61-3-501."*

Section 98. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) Except as provided in subsection (1)(c), the owner of a light

vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a \$50 registration fee, the applicable registration and license fees under 61-3-321 and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

- ~~(i) junk vehicle disposal fees under 15-1-122(3)(a);~~
- ~~(ii) weed control fees under 15-1-122(3)(b);~~
- ~~(iii) the former county motor vehicle computer fees under 61-3-511;~~
- ~~(iv)(i)~~ the local option vehicle tax or flat fee on vehicles under 61-3-537;
- ~~(v)(ii)~~ if applicable, special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and
- ~~(vi)(iii)~~ senior citizens and persons with disabilities transportation services fees as provided in ~~61-3-321(6)~~ 61-3-321(5).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(c) The following series of license plates may not be used for purposes of permanent registration of a vehicle:

- (i) Montana national guard license plates issued under 61-3-458(2)(b);
- (ii) reserve armed forces license plates issued under 61-3-458(2)(c);
- ~~(iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);~~
- ~~(iv)(iii)~~ amateur radio operator license plates issued under 61-3-422;
- ~~(v)(iv)~~ collegiate license plates issued under 61-3-465; and
- ~~(vi)(v)~~ generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a *motor* vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the \$50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of ~~61-3-321(3)~~ 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a *motor* vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a *motor* vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 *and 61-3-216* and ~~file an application for registration~~ *register the motor vehicle* under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)”

Section 99. Section 61-3-701, MCA, is amended to read:

“61-3-701. Out-of-state vehicles used in gainful occupation to be registered — reciprocity. (1) ~~Before~~ *A person may not operate* a motor vehicle that is registered in another jurisdiction ~~may be operated~~ on the highways of this state ~~if the motor vehicle is used~~ for hire, compensation, or profit or ~~before the owner or user of the vehicle uses the vehicle~~ if the ~~owner or user~~ *person* is engaged in gainful occupation or business enterprise in the state, including highway work, ~~the owner of the vehicle shall register~~ *unless the motor vehicle is registered* at the office of a county treasurer or an authorized agent of the department. Upon satisfactory evidence of ownership submitted to the county treasurer or the department’s authorized agent and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by ~~15-8-201, 15-8-202, 15-24-301~~ *61-3-321*, 61-3-529, 61-3-537, or 61-3-560 and 61-3-561, the treasurer or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101. *One-fourth of the annual fees or taxes due on the motor vehicle subject to registration under this section must be paid for each calendar quarter or portion of a calendar quarter for the year that the motor vehicle will be located or operated in Montana.*

(2) Upon payment of the fees or taxes, the treasurer or the department’s authorized agent shall issue to the *motor* vehicle owner a registration receipt, ~~and the proper license plates, or other identification markers and a registration decal indicating the calendar quarter and year for which the motor vehicle is registered.~~ The license plates, *with attached registration decal*, ~~or identification markers~~ must at all times be displayed upon the *motor* vehicle when operated or driven upon roads and highways of this state during the registration period indicated on the receipt.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of title may not be issued for a *motor* vehicle registered under this section.

(4) This section is not applicable to a *motor* vehicle covered by a valid and existing reciprocal agreement or declaration entered into under Montana law.”

Section 100. Section 61-3-707, MCA, is amended to read:

“61-3-707. Foreign vehicles used for transportation in connection with employment *Health care professional exception.* (1) ~~(a) Before a motor vehicle that has been assessed a fee pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of fees shall apply for and obtain a window decal provided by the department.~~

~~(b) Decals must be color coded to distinguish the four quarterly registration periods of the year.~~

~~(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.~~

~~(d) There is a \$2 fee for each decal, and money collected from this fee must be deposited to the state general fund. The \$2 fee is in addition to the registration fee.~~

~~(c) A current window decal must be displayed on the lower right-hand corner of the windshield.~~

(2) ~~(a)~~(1) Before a motor vehicle exempted pursuant to 15-6-217 may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. *The fee for the decal is \$2, which must be remitted to the state and deposited in the state general fund.* The department shall supply the decals to the county treasurers.

~~(b)~~(2) An application approved by the department must include a verification from the employer that the person is employed by a Montana health care facility that is located in an area that has been:

~~(i)~~(a) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

~~(ii)~~(b) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3).

(e)(3) Decals expire each year on December 31 of the year in which issued, and application for ~~reregistration~~ *renewal of registration* must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

~~(d)~~(4) A current window decal must be displayed on the lower right-hand corner of the windshield.”

Section 101. Section 61-3-721, MCA, is amended to read:

“61-3-721. Proportional registration of fleet vehicles, registration periods, application, fee formula, and payment — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation. *If an electronic record of title has not been created for or a certificate of title issued for an apportionable vehicle in the fleet, the department of transportation, as an authorized agent of the department of justice, may also process the application for certificate of title for the vehicle as provided in 61-3-203 and 61-3-217.*

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) and subsection (6) of this section, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, “calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31 1st period
- (b) April 1 through June 30 2nd period
- (c) July 1 through September 30 3rd period
- (d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized

pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.

(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.

(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.

(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.

(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.

(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.

(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.

(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.

(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."

Section 102. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer (except a trailer having an unloaded weight of less than 500 pounds), motorcycle, quadricycle, or special mobile equipment that is not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor ~~vehicle~~ *vehicles, including new trucks, buses, and light vehicles covered under the franchise the dealer holds as franchisee and used trucks, buses, recreational vehicles, light vehicles, and trailers;*

(ii) used motor ~~vehicle~~ *vehicles, including used trucks, buses, and light vehicles;*

(iii) new recreational ~~vehicle~~ *vehicles, including new motor homes and travel trailers covered under the franchise the dealer holds as franchisee and used motor homes and travel trailers;*

(iv) used recreational ~~vehicle~~ *vehicles, including used motor homes and travel trailers;*

(v) ~~trailer~~ *trailers, including semitrailers and pole trailers, but excluding travel trailers;*

(vi) ~~or~~ special mobile equipment; or

~~(vii) motorcycle motorcycles or quadricycle quadricycles, including new or used motorcycles or quadricycles, but excluding new off-highway vehicles unless the dealer is licensed under Title 23.~~

(b) The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

~~(c) With the exception of a licensed new motor vehicle dealer, a A dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license under subsection (2)(a). A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.~~

(d) Subject to the provisions of 61-4-124, a dealer's license issued by the department is valid until:

(i) voluntarily returned to the department for surrender and cancellation upon the cessation of the dealer's business operations; or

(ii) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and of a permanent nonresidential building that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought.

An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, *new recreational vehicles*, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter; and

(i) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of \$5 and one or more of the following license fees based on the type of dealer's license being sought:

- (a) \$25 for a new motor vehicle dealer's license;
- (b) \$25 for a used motor vehicle dealer's license;
- (c) \$25 for a new or used recreational vehicle dealer's license; or
- (d) \$25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of \$50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of \$15,000. All bonds

must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually.”

Section 103. Section 61-4-102, MCA, is amended to read:

“61-4-102. Dealer’s license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) (a) Dealer plates designed by the department must be similar to the ~~numbered standard license~~ plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer’s license issued, as follows:

- (A) the letter “D” for a new motor vehicle dealer;
- (B) the letters “UD” for a used motor vehicle dealer; or
- (C) the letters “RV” for a new or used recreational vehicle dealer; and
- (iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer’s established place of business is located, followed by the dealer’s license type abbreviation, the dealer’s license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer’s license shall pay an annual fee of \$25 for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

- (A) 5% of the first 100 vehicle sales for the previous year; plus
- (B) 3% of the next 100 vehicle sales for the previous year; plus
- (C) 2% of vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer’s sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a vehicle bearing dealer plates is prima facie evidence that the vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and, except as provided in subsection (7)(b), shall file an annual report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

(8) (a) All numbered dealer plates expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 104. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) Except as provided in 61-4-124(6), a licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under ~~61-3-201(2)~~ *61-3-302(3)* when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the vehicle may not be transferred until an application for a certificate of title has been submitted by the dealer to the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, *a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle was transferred if the dealer is an authorized agent, as defined in [section 2]. In addition,* the following acts are required of the dealer on or before the times set forth in this subsection:

~~(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue a temporary registration permit for the vehicle and affix the temporary registration permit to the vehicle in a manner prescribed by the department. The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance. There must be imprinted on the temporary registration permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". Unless a durable license plate style placard is issued, one copy of the temporary registration permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department. It is unlawful for the dealer to issue more than one 20-day temporary registration permit for each vehicle sale.~~

~~(b)(a)~~ Within 4 working 30 calendar days following the date of delivery of the motor vehicle, the dealer shall forward to the county treasurer of the county where the ~~purchaser resides~~ vehicle is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the vehicle has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-221 and 61-3-222 61-3-216 and 61-3-220; and

~~(iii) a copy of the temporary registration permit affixed to the vehicle by the dealer.~~

~~(e)(b)~~ Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery, or by first-class mail, in which event they are considered to have been delivered at the time of mailing or by electronic means, as authorized by the department.

~~(d)(c)~~ If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection ~~(2)(b)~~ (2)(a) because the certificate of title is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection ~~(2)(b)~~ (2)(a) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title if requested under 61-3-216(2)(f); and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.

(5) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

Section 105. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) (a) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

~~(a) issue and affix a temporary registration permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the temporary registration permit or, if a durable license plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department;~~

~~(b) within 4 working 30 calendar days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides vehicle is domiciled:~~

~~(i) one copy of the temporary registration permit issued under subsection (1)(a) or a copy of the information described in the records concerning a placard;~~

~~(ii)(i) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and~~

~~(iii)(ii) a manufacturer's certificate of origin that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.~~

(b) If the dealer is an authorized agent, as defined in [section 2], a temporary registration permit may be issued under 61-3-224 to the person to whom the new motor vehicle was transferred.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable."

Section 106. Section 61-4-121, MCA, is amended to read:

"61-4-121. Twenty-day temporary Temporary registration permit — limitation on issuance and transfer — violation — penalty. (1) ~~(a) A~~ *If the dealer is an authorized agent, as defined in [section 2], the* dealer may not issue more than one 20-day temporary registration permit under 61-4-111 or 61-4-112 for each vehicle sale.

~~(b) A dealer may not transfer 20-day temporary registration permits to another dealer unless the dealer:~~

~~(i) notifies the department within 3 days of the transfer;~~

~~(ii) identifies to the department the dealer to whom any temporary registration permits have been transferred;~~

~~(iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred temporary registration permits.~~

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day temporary registration permits for a period of time determined by the department."

Section 107. Section 61-4-222, MCA, is amended to read:

“61-4-222. Fees. (1) Upon making the application required under 61-4-221, the manufacturer shall pay to the department a fee of \$250, which entitles the manufacturer to one set of ~~number~~ license plates, and an additional fee of \$20 for each additional set of ~~number~~ license plates. The manufacturer may receive one set of ~~number~~ license plates for each manufacturer’s representative.

(2) The fees provided for in subsection (1) do not apply to the manufacturer of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801.”

Section 108. Section 61-4-223, MCA, is amended to read:

“61-4-223. Assignment of numbers. (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in 61-4-222, furnish every qualified manufacturer’s representative of that manufacturer with one set of ~~number~~ license plates. Assigned ~~number~~ license plates must be similar to ~~number~~ standard license plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters “MFG”.

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer. The department shall provide nonremovable stickers bearing the appropriate county designation. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer’s representative who qualifies as provided in 61-4-221(1) may display manufacturer’s license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer’s business and operated by or under the control of the manufacturer’s representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer’s license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer’s license.”

Section 109. Section 61-4-310, MCA, is amended to read:

“61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) ~~(a) A vehicle, subject to license under this title registration under chapter 3, or a mobile home~~ may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit for the vehicle in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title upon application presented to the county treasurer in a form provided by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the personal property taxes *or fees in lieu of property tax* on the vehicle, if any are due, have been paid, and upon payment of a fee of \$5. The fee must be forwarded to the department of revenue for deposit in the state general fund. The permit is not in lieu of fees and permits required under 61-4-301 and 61-4-302.

~~(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners.~~

(2) The permit is for the transit of the vehicle ~~or mobile home~~ only, and the vehicle ~~or mobile home~~ may not at the time of the transit be used for the transportation of any persons, except the driver, or any property for compensation or otherwise and is for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to this subsection.

(4) *A manufactured home, mobile home, or house trailer may be moved unladen upon the highways of this state from a point within the state to a point of destination only if a tax-paid receipt authorizing the move has been issued under 15-24-206."*

Section 110. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) A person who has resided in Montana for more than ~~120~~ 60 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if the person has resided in Montana for more than 30 consecutive days and must be licensed under the laws of Montana before operating any commercial motor vehicle."

Section 111. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) *The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver license renewal services.*

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. ~~The~~ *Except as provided in [section 6] and 61-5-115, the* department shall mail the notice to the Montana mailing address shown on the driver's license ~~unless the licensee has submitted a change of address as required by 61-5-115.~~

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) renewal notice — ~~50 cents~~ 50 cents.

~~(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."~~

Section 112. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate or replacement licenses license or permit. If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed *or a person wants to update personal information contained on an instruction permit or a driver's license issued to the person*, the person to whom ~~it~~ *the permit or license* was issued may, upon the payment of a fee of \$10, obtain a duplicate or ~~substitute~~ *replacement* permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed *or that personal information has changed.*"

Section 113. Section 61-5-115, MCA, is amended to read:

"61-5-115. Notice of change of address or name. Whenever any person after applying for or receiving a driver's license ~~shall move~~ *moves* from the address named in ~~such the~~ application or in the ~~issued~~ license, ~~issued to him or~~ *when the name of a licensee is changed by marriage or otherwise such the* person shall within 10 days ~~thereafter~~ notify the department in writing *or electronically by an approved automated interface of his the* old and new addresses ~~or of such former and new names~~ and of the number of any license then held by ~~him~~ *the person.*"

Section 114. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) ~~The~~ *The* disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.5% of each driver's license fee and 62.5% of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit *all remaining fees* to the department of revenue ~~all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account state for deposit in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).~~

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall ~~remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall~~ deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 115. Section 61-5-206, MCA, is amended to read:

~~“61-5-206. Authority of department to suspend license or driving privilege or issue probationary license — right to hearing.~~ (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(b) has falsified the licensee's date of birth on the application for a driver's license;

(c) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; or

(d) has authorized another to use the licensee's driver's license or identification card to obtain alcohol.

(2) ~~However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended. If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.~~

~~(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license.”~~

Section 116. Section 61-5-208, MCA, is amended to read:

~~“61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — ignition interlock device allowed on first offense.~~ (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked

may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

~~(3) (a) If the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.~~

~~(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.~~

(4)(3) (a) Except as provided in subsection (4)(b) (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(5)(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 117. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device. (1) In

addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition *and if a probationary license is recommended by the court*, the court may for a person convicted of a first offense under 61-8-401 or 61-8-406 ~~and granted a probationary license~~ restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the *probationary* period ~~that the person is granted a probationary license~~ and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; and

(b) the person's blood alcohol concentration at the time of the arrest was 0.16 or greater.

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subjected to the forfeiture procedure provided under 61-8-421; or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if the court determines that approved ignition interlock devices are reasonably available.

(3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

Section 118. Section 61-10-222, MCA, is amended to read:

"61-10-222. Time for payment of fees. ~~(1)~~ Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees provided in this part must be paid in the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current *20-day temporary registration* permit issued under ~~the provisions of 61-4-111 or 61-4-112~~ 61-3-224, the fees provided in this part are due and payable at the time of registration.

~~(2) A person who applies for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.~~

~~(3) When a person applies for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part must be computed for the registration period at one twelfth of the applicable fee for each month or part of month in the registration period."~~

Section 119. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by the department. (1) ~~The~~ *Except as provided in subsection (6), the* department shall ~~file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order,~~

~~(a) all applications denied and on each the reasons for denial;~~
~~(b) all applications granted; and~~
~~(c) the name of each licensee whose license has been suspended or revoked by the department and after each name the reasons for the action. create and maintain a central database of electronic files that includes an individual Montana driving record for each person:~~

(a) who has been issued a Montana driver's license;

(b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and

(c) whose driver's license or driving privileges have been suspended, revoked, canceled or otherwise withdrawn by the department.

(2) ~~(a) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. The department shall maintain records in a manner that allows an individual record of each licensee, showing the convictions of the licensee and certain traffic accidents in which the licensee has been involved. The records must be readily ascertainable and available for the consideration of the department upon any application for renewal of a license and at other suitable times. A~~ *An individual Montana driving record maintained under this section must include:*

(i) personal information obtained from the application for a driver's license or a report of conviction;

(ii) the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

(iii) all convictions reported to the department for the person; and

(iv) traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) If the department receives notice that a ~~licensee~~ *person* has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the ~~licensee's~~ *person's individual Montana driving record.*

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, *by electronic or other means, a report of the conviction* ~~a certified copy of the record~~ to the motor vehicle administrator in the state in which the person is a resident *or licensed.*

~~(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. A photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.~~

~~(5)~~(4) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

~~(6)~~(5) (a) ~~A~~ Except as provided in subsection (5)(b), a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification by a custodian of the record appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with ~~61-11-102(6)~~ 61-11-102(5), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: _____
(Print Full Name)

(b) *An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date. A court or the office of a clerk of court of this state that is electronically connected by a terminal device to the department's central database of electronic individual Montana driving records may receive and use as evidence without further foundation the computer-generated certified information obtained by the terminal device from the file. An authorized employee of a court of record of this state may certify in writing that an order, record, or paper was produced from a terminal device that is located in and under the control of the court and that is connected to the department's central database of electronic individual Montana driving records files and that the order, record, or paper was not altered in any way.*

(6) *The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."*

Section 120. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

- (a) the driver's or licensee's name, driver's license number, and date of birth;
- (b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;
- (c) convictions of the driver or licensee; and
- (d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10 must be paid if a certified Montana record, as provided in ~~61-11-102(6)~~ *61-11-102(5)*, is requested. A fee of 8 cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data."

Section 121. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping *record of the convictions and bond forfeitures upon which the habitual traffic offender designation was based.* The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing."

Section 122. Section 61-11-210, MCA, is amended to read:

“61-11-210. Appeals. (1) A person declared to be a habitual traffic offender may file a petition in the district court in the county in which the person resides, or in Lewis and Clark County if the person is not a resident of the state, challenging the declaration and revocation. The petition must be filed within 30 days after the person received notice under 61-11-204. Receipt under 61-11-204 is presumed to be on the third day after the date of mailing. After the petition is filed, a copy must be promptly served on the county attorney of the county in which the petition was filed. The county attorney shall represent the department in the proceeding. Proof of service must be filed with the clerk of the court prior to a hearing or grant of relief. Untimely service or lack of service upon the county attorney waives the right to a hearing. The filing of the petition does not stay enforcement of the revocation.

(2) Upon receipt from the county attorney of notice of the petition, the department shall give the county attorney a certified ~~copy of the abstracts of the records of record~~ of the convictions and bond forfeitures upon which the habitual traffic offender declaration was based.

(3) A hearing date must be set and at least 10 days' notice of the date must be given to the parties. The scope of the hearing is limited to whether the petitioner is the person named in the certified ~~abstracts~~ record of convictions and bond forfeitures upon which the habitual traffic offender declaration was based and whether the petitioner is a habitual traffic offender. The petitioner has the burden of proving that the department's actions are invalid or that its records are erroneous.

(4) If the court finds that the petitioner is the person declared by the department to be a habitual traffic offender and that the petitioner is a habitual traffic offender, the court shall dismiss the petition. If the court finds that the petitioner is not the person declared by the department to be a habitual traffic offender or that the petitioner is not a habitual traffic offender, the court shall grant the petition and provide the petitioner with appropriate relief, which must include an order that the department reimburse the petitioner for court fees paid by the petitioner.

(5) Upon a finding adverse to the petitioner, the clerk of the court shall file with the department a copy of the court's order, together with the petitioner's driver's license if the license has not been previously surrendered. If the petition is granted, the clerk of the court shall file with the department a copy of the court's order granting the petition. The order must state the grounds upon which the relief was granted and must specify the court findings on the conviction points, if any, that have been accrued by the petitioner. The department shall then correct the petitioner's driving record to comport with the court's specific findings.”

Section 123. Section 76-2-202, MCA, is amended to read:

“76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in ~~61-1-501~~ 15-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 124. Section 76-2-302, MCA, is amended to read:

"76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in ~~61-1-501~~ 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 125. Repealer. Sections 15-16-202, 61-3-207, 61-3-209, 61-3-342, and 61-3-526, MCA, are repealed.

Section 126. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-101, must read as follows:

“61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, *trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles* for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile* registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, including, as pertinent to the motor vehicle, *trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*:

(i) the manufacturer of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(ii) the manufacturer's designation of the style of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, *if applicable*, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* as shown by the manufacturer;

(vi) the distinctive license number assigned to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a *motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile* must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data consider to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to *motor vehicles, trailers, semitrailers, pole trailers, motorboats, personal watercraft, sailboats, or snowmobiles* that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, *motor vehicle* records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 127. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-208 must read as follows:

"61-3-208. Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title

that assigns the prior owner's interest in the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* to the applicant, the department may issue a certificate of title if subsection (2) is complied with.

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:

(i) include the facts and circumstances through which the applicant acquired ownership and possession of the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile*;

(iii) state that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a ~~boat~~ *camper, off-highway vehicle, motorboat, personal watercraft, sailboat* 12 feet in length or longer, or snowmobile, and the loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) ~~The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is~~ *If application is being made for a certificate of title to a motor vehicle, trailer, semitrailer, or pole trailer with a value of \$500 or less, the applicant must establish the loss of the certificate of title to the department's satisfaction and either provide evidence of as indicated by the average trade-in or wholesale value of the vehicle motor vehicle, trailer, semitrailer, or pole trailer as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle motor vehicle, trailer, semitrailer, or pole trailer, according to the applicant's knowledge and belief the applicant must certify that the value of the motor vehicle, trailer, semitrailer, or pole trailer is \$500 or less.*

(iii) ~~The~~ *If application is being made for a motor vehicle, trailer, semitrailer, or pole trailer with a value that exceeds \$500, the applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the vehicle motor vehicle, trailer, semitrailer, or pole trailer for which the application is being made, as determined by the surety company. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, trailer, semitrailer, or pole trailer and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle motor vehicle, trailer, semitrailer, or pole trailer.*

(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the ~~vehicle~~ *motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile* is no longer required to have a certificate of title in this state.”

Section 128. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [sections 1 through 6].

Section 129. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the definitions contained in [section 2 of this act] must be codified in 61-1-101 and the internal references must be adjusted.

Section 130. Coordination instruction. If Senate Bill No. 261 and [this act] are both passed and approved, then [section 10 of this act], amending 15-1-116, is void.

Section 131. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved then [section 13 of this act], amending 15-1-122, is void and [section 4] of Senate Bill No. 285, amending 15-1-122, is amended as follows:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b)(a)~~ \$0 in fiscal years 2004 and 2005;

~~(c)(b)~~ \$3,050,205 in fiscal year 2006; and

~~(d)(c)~~ in each succeeding fiscal year, the amount in subsection (2)~~(e)~~ (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5,:

(i) ~~\$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and~~

(ii) ~~\$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in~~

~~75-10-532.~~ 1.62% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.48% of the motor vehicle revenue deposited in the state general fund in succeeding fiscal years. The amount of 8.75% of the allocation in fiscal year 2006 and 9.48% of the allocation in fiscal year 2007 and succeeding years must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816;

(i) ~~\$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and~~

(ii) ~~for vehicles registered or reregistered pursuant to 61-3-321:~~

(A) ~~\$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and~~

(B) ~~\$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and~~

(C) ~~\$7.50 for each permanently registered light vehicle~~ 1.53% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.50% of the motor vehicle revenue deposited in the state general fund in succeeding fiscal years;

(c) to the department of fish, wildlife, and parks:

(i) ~~\$2.50 in fiscal year 2006 and, 0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years, 0.46% of the motor vehicle revenue deposited in the state general fund, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received with the applicable percentage to be:~~

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 5.2% in fiscal year 2006 and 4.8% in fiscal year 2007 and succeeding years;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 20.8% in fiscal year 2006 and 19.1% in fiscal year 2007 and succeeding years;

(III) enforce the provisions of 23-2-804, 12.1% in fiscal year 2006 and 11.1% in fiscal year 2007 and succeeding fiscal years; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 18.1% in fiscal year 2006 and 16.7% in fiscal year 2007 and succeeding fiscal years; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 43.8% in fiscal year 2006 and 48.3% in fiscal year 2007 and succeeding fiscal years;

(ii) ~~\$5 in fiscal year 2006 and, 0.12% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.10% of the motor vehicle revenue deposited in the state general fund in each subsequent fiscal year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and~~

23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; *and*

~~(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;~~

~~(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;~~

~~(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;~~

~~(vi)(iii) an amount equal to 20% 0.5% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.16% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and~~

~~(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;~~

~~(d) 0.75% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.64% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year, with 21.30% in fiscal year 2006 and 24.55% in fiscal year 2007 and succeeding fiscal years to be deposited in the state veterans' cemetery account; provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459 and with 78.70% in fiscal year 2006 and 75.45% in fiscal year 2007 and succeeding fiscal years to be deposited in the veterans' services account provided for in 10-2-112(1);~~

~~(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:~~

~~(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;~~

~~(f)(e) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) 0.59% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.30% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and~~

~~(g)(f) to the search and rescue account provided for in 10-3-801,;~~

~~(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;~~

~~(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and~~

~~(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803 0.20% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.04% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year; and.~~

~~(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).~~

~~(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners. For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:~~

~~(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;~~

~~(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;~~

~~(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and~~

~~(d) all money collected pursuant to 15-1-504(3).~~

~~(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."~~

Section 132. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 25 of this act], amending 23-2-616, is void.

Section 133. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-1-101(57) as amended by Senate Bill No. 285 must read as follows:

"(57) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101."

Section 134. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-1-101(19) as amended by Senate Bill No. 285 must read as follows:

"(19) "Manufactured home" has the meaning provided in 15-1-101."

Section 135. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-1-101(55) as amended by Senate Bill No. 285 must read as follows:

“(55) “Temporary registration permit” means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

- (i) required vehicle and owner information; and
- (ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.”

Section 136. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-1-101(22) as amended by Senate Bill No. 285 must read as follows:

“(22) “Mobile home” or “house trailer” has the meaning provided in 15-1-101.”

Section 137. Coordination instruction. (1) If Senate Bill No. 285 and [this act] are both passed and approved, then [section 41] of Senate Bill No. 285, amending 61-1-101, must include a new subsection (42) that reads:

“(42) “Registration” or “register” means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.”

(2) Subsequent subsections in [section 41] of Senate Bill No. 285, amending 61-1-101, must be renumbered and internal references must be adjusted.

Section 138. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 64] of Senate Bill No. 285, amending 61-3-224, is void and [section 47 of this act], amending 61-3-224, is amended as follows:

“61-3-224. Temporary registration permit — issuance — placement — fees. (1) ~~A The department, an authorized agent, or a county treasurer or a law enforcement officer may issue a temporary registration permit under the provisions of 61-3-317. A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342 to:~~

(a) *a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle under this chapter;*

(b) *the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;*

(c) *the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for the vehicle under this chapter;*

(d) *a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its*

titling and registration under the laws of the nonresident's jurisdiction of residence;

(e) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or

(f) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

~~(2) An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter. A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:~~

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration the vehicle under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

~~(3) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-610, 23-2-818, 61-4-111, or 61-4-112.~~

~~(4)(3)~~ A temporary registration permit issued under subsections (1) through (3) this section must contain the following information:

(a) a temporary registration permit control plate number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the *motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile*, including year, make, model, and vehicle identification number, the name and address of the person from whom ownership of the *motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile* was transferred, the name, mailing address, and residence address of the person to whom ownership of the *motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile* has been transferred, and the date of transfer issuance.

(4) A temporary registration permit for:

(a) a *motor vehicle, trailer, semitrailer, or pole trailer* must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsection (5)(b) of this section, a \$3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of \$8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessels in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in [section 5 of House Bill No. 671].

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder must title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

Section 139. Coordination instruction. If Senate Bill No. 318 and [this act] are both passed and approved, then [section 8] of Senate Bill No. 318, amending 61-3-301, is void.

Section 140. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-302 must be amended as follows:

"61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden — ~~vehicles exempt from registration — exceptions.~~ (1) (a) ~~It shall especially be provided that a~~ A resident of the state of Montana ~~shall~~ who owns a motor vehicle, trailer, semitrailer, or pole trailer may not operate ~~a~~ the motor vehicle, trailer, semitrailer, or pole trailer ~~under a license with license plates issued by any other state than Montana.~~

(b) A person who has resided in Montana for more than 60 consecutive days is considered to be a resident for the purpose of vehicle titling and registration laws, and a motor vehicle, trailer, semitrailer, or pole trailer owned by the person must be titled and registered under the laws of Montana prior to operation in this state after the 60-day period.

(2) A motor vehicle, trailer, semitrailer, or pole trailer driven or moved upon a highway in this state and owned by a nonresident of this state is exempt from registration under this chapter if:

(a) the vehicle is properly registered in and displays valid license plates of the jurisdiction in which the nonresident owner resides; and

(b) (i) the vehicle is not used for the transportation of persons or property for hire, compensation, or profit;

(ii) the nonresident owner is not employed or engaged in a commercial or business enterprise in this state; or

(iii) *the vehicle is used for the exclusive purpose of filming motion pictures or television commercials and does not remain in the state for a period in excess of 180 consecutive days in a calendar year.*

(3) *A motor vehicle, trailer, semitrailer, or pole trailer that is owned by a manufacturer, a dealer, a wholesaler, or an auto auction and that is held for sale is exempt from registration under this part, even though the motor vehicle, trailer, semitrailer, or pole trailer is incidentally moved on the highway and is used for purposes of testing or demonstration or is used by a manufacturer solely for testing.*

(4) *A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven to an auto wrecking graveyard for disposal is exempt from the provisions of this chapter."*

Section 141. Coordination instruction. If House Bill No. 541 and [this act] are both passed and approved, then [section 3] of House Bill No. 541 that amends 61-3-303 is void.

Section 142. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-303 must be amended as follows:

"61-3-303. ~~Registration~~ Original registration — process — fees. (1) ~~A~~ Except as provided in 61-3-324, Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the motor vehicle, trailer, semitrailer, or pole trailer is permanently assigned domiciled.

(2) ~~(a)~~ Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

~~(i)(a)~~ as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

~~(ii)(b)~~ the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

~~(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.~~

(3) (a) A county treasurer ~~shall~~ may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, ~~present the surrender a previously issued~~ assigned

certificate of title ~~only as authorized by the department under 61-3-342.~~ *The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.*

(4) ~~The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration. Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:~~

(a) *update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;*

(b) *assign a registration period for the vehicle under 61-3-311;*

(c) *determine the vehicle's age, if required, under 61-3-501;*

(d) *determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and*

(e) *assign and issue license plates for the vehicle under 61-3-331.*

(5) ~~A~~ *Unless otherwise provided by law, a person who seeks to register registering a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall pay to the county treasurer:*

(a) ~~the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;~~

(b) ~~except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle the fees in lieu of tax or registration fees, as required for:~~

(i) ~~a light vehicle under 61-3-560 through 61-3-321(2) or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570 imposed against the vehicle for the current year of registration and the immediately previous year;~~

(ii) ~~a motor home under 61-3-321;~~

(iii) ~~a travel trailer under 61-3-321;~~

(iv) ~~a motorcycle or quadricycle under 61-3-321;~~

(v) ~~a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or~~

(vi) ~~a trailer under 61-3-321; and~~

(c)(b) ~~a donation of \$1 or more if the person has indicated on the application indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and~~

(d)(c) ~~a donation of \$1 or more if the person has indicated on the application indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.~~

(6) ~~The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5). Except as provided in 61-3-560 through 61-3-562, the department may not assess or~~

~~impose and the county treasurer may not collect taxes or fees for a period other than:~~

~~(a) the current year; and~~

~~(b) except as provided in subsection (9), the immediately preceding year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.~~

(7) The department may make full and complete investigation of the registration status of the *motor vehicle, trailer, semitrailer, or pole trailer*. A person seeking to register a motor vehicle, *trailer, semitrailer, or pole trailer* under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection ~~(5)(e)~~ (5)(b) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, *semitrailer, or pole trailer*, ~~or semitrailer~~ that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is owned by the same person who registered the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer*. Once registered, a ~~vehicle described in this subsection~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is registered permanently unless ownership of the ~~vehicle~~ is transferred.

(b) Whenever ownership of a ~~vehicle described in subsection (9)(a)~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* is transferred, the new owner is required to register the ~~vehicle~~ *travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer* as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection ~~(5)(d)~~ (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury."

Section 143. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-311 must be amended as follows:

"61-3-311. Registration — ~~annual renewal~~ — time periods. (1) ~~Registration must be renewed annually, and registration fees must be paid annually. Except Unless a motor vehicle, trailer, semitrailer, or pole trailer is subject to permanent registration under this title and except as provided in 61-3-313, through 61-3-316, 61-3-318, 61-3-526 61-3-701, and 61-3-721, and subsection (3) of this section, all registrations expire on December 31 of the year in which they are issued and must be renewed annually upon payment of all required fees to the county treasurer or the department's agent not later than February 15 of each year the department, an authorized agent, or a county~~

treasurer shall, upon original registration of a motor vehicle in this state, assign each motor vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the motor vehicle is first registered in this state and designate the calendar year in which the current registration will expire. If the ownership of a motor vehicle is transferred during the registration year, the new owner shall apply for a certificate of title and register the motor vehicle as provided by this chapter.

~~(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3) unless:~~

~~(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or~~

~~(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.~~

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the motor vehicle is registered and the motor vehicle's registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal, if the motor vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal, if the motor vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the motor vehicle, trailer, semitrailer, or pole trailer to another person.

(3) (a) Upon request of the motor vehicle a county treasurer may assign a motor vehicle to a registration period, as provided in 61-3-316, other than the calendar month in which the motor vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the calendar month in which the motor vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the motor vehicle's registration decal.

(b) The county treasurer shall determine fees imposed for a motor vehicle registered for a period between 13 and 24 months. All registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.

(c) A motor vehicle registered under the provisions of 61-3-303(3)(b) may not be registered under this subsection (3).

(4) If a motor vehicle, trailer, semitrailer, or pole trailer is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the motor vehicle, trailer, semitrailer, or pole trailer transfers ownership of the vehicle to another person."

Section 144. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-312 must be amended as follows:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in ~~61-3-311(1), 61-3-314, 61-3-318, 61-3-526, 61-3-560,~~

~~61-3-562, 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter expires on December 31 of each year and must be renewed annually upon payment of registration fees as provided in 61-3-303 and 61-3-321 on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration. The renewal takes effect on January 1 of each year. A person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 to the department, an authorized agent, or a county treasurer in any county of this state. Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid only during for the registration year period for which it is issued.~~

(2) The owner of a motor vehicle ~~registered subject to registration renewal under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration decal of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period.~~

(3) *The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:*

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 145. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-313 must be amended as follows:

~~"61-3-313. Vehicles subject to staggered Motor vehicles exempt from registration renewal. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except The following motor vehicles are exempt from the registration renewal requirements of 61-3-312:~~

(1) *motor vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;*

~~(2) mobile homes and motor homes;~~

~~(3) vehicles that are registered in accordance with or subject to 61-3-411 or 61-3-458(3)(b);~~

~~(4) trucks exceeding a 1-ton rated capacity;~~

~~(5) trailers, semitrailers, tractors, and buses;~~

~~(6) special mobile equipment as defined in 61-1-104;~~

~~(7)(2) motor vehicles registered as part of a fleet under 61-3-318; and~~

~~(8)(3)~~ apportionable motor vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733; and

(4) unless a transfer of ownership occurs, a travel trailer, trailer, semitrailer, pole trailer, motorcycle, or quadricycle, including a motorcycle or quadricycle registered only for off-highway use under Title 23, chapter 2, part 8, is permanently registered."

Section 146. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-314 must be amended as follows:

"61-3-314. Registration period. ~~(1) Except as provided in 61-3-315, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.~~

~~(2) There~~ For the purposes of this chapter, there are 12 registration periods to which a motor vehicle may be assigned, each of which Each registration period commences on the first day of a calendar month. The periods are:

- | | |
|---|--------------|
| ~~(a)(1)~~ January 1 through January 31 | 1st period |
| ~~(b)(2)~~ February 1 through February 28/29 | 2nd period |
| ~~(c)(3)~~ March 1 through March 31 | 3rd period |
| ~~(d)(4)~~ April 1 through April 30 | 4th period |
| ~~(e)(5)~~ May 1 through May 31 | 5th period |
| ~~(f)(6)~~ June 1 through June 30 | 6th period |
| ~~(g)(7)~~ July 1 through July 31 | 7th period |
| ~~(h)(8)~~ August 1 through August 31 | 8th period |
| ~~(i)(9)~~ September 1 through September 30 | 9th period |
| ~~(j)(10)~~ October 1 through October 31 | 10th period |
| ~~(k)(11)~~ November 1 through November 30 | 11th period |
| ~~(l)(12)~~ December 1 through December 31 | 12th period" |

Section 147. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-317 must be amended as follows:

"61-3-317. New registration required for transferred motor vehicle — grace period — penalty — display of proof of purchase. (1) ~~Except as otherwise provided in this section, the~~ The new owner of a transferred motor vehicle, trailer, semitrailer, or pole trailer has a grace period of ~~20~~ 40 calendar days from the date of purchase to make application for a certificate of title and pay the registration fees, fees in lieu of tax and other fees required by ~~part 5 of~~ this chapter, and local option taxes, if applicable, ~~unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year.~~ However, the motor vehicle, trailer, semitrailer, or pole trailer may not be operated upon the streets and highways of this state during this period unless a temporary registration permit has been issued for and is properly displayed on the motor vehicle, trailer, semitrailer, or pole trailer as permitted by 61-3-224.

~~(2) The new owner of a vehicle described in 61-3-303(9) shall make application and pay the registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously.~~

~~(2)~~(2) If the motor vehicle, *trailer, semitrailer, or pole trailer* was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the *motor vehicle, trailer, semitrailer, or pole trailer* upon the streets and highways of this state without a current registration receipt or registration decal during the ~~20-day~~ 40-day period if at all times during that period, a temporary registration permit, *issued under 61-3-224, obtained from the county treasurer or a law enforcement officer as authorized by the department*, is clearly properly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle.

~~(4) Registration fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.~~

~~(5) Failure to make application for a certificate of title within the time provided in this section subjects the purchaser to a penalty of \$10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund.~~

Section 148. Coordination instruction. If Senate Bill No. 285, Senate Bill No. 318, and [this act] are all passed and approved, then [section 16] of Senate Bill No. 318, a coordination instruction, is void and 61-3-321 must be amended as follows:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, ~~reregistration~~ *renewal of registration* of motor vehicles, *snowmobiles, watercraft, trailers, and semitrailers, and pole trailers* in accordance with this chapter, as follows as provided in subsections (2) through (19):

~~(a)~~(2) *Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17; trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:*

- (a) if the vehicle is 4 years old or less, \$217;*
- (b) if the vehicle is 5 through 10 years old, \$87; and*
- (c) if the vehicle is 11 or more years old, \$28.*

~~(b)~~(3) *Except as provided in subsection (15), the one-time registration fee based on the declared weight of the trailer, semitrailer, or pole trailer is as follows:*

- (a) if the declared weight is less than 6,000 pounds, \$61.25; or*
- (b) if the declared weight is 6,000 pounds or more, \$148.25*

~~trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.~~

~~(e)~~(4) *The annual registration fee for motor vehicles registered owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:*

- ~~(i)~~(a) 2,850 pounds and over, \$10; and
- ~~(ii)~~(b) under 2,850 pounds, \$5.

~~(d)~~(5) *Except as provided in subsection (15), the one-time registration fee for off-highway vehicles registered pursuant to 23-2-817, \$9 in calendar year 2004 and, in each subsequent year, \$19.25 other than quadricycles is \$61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.*

~~(e)~~(6) *The annual registration fee for light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks, buses, and logging trucks in excess of 1 ton, \$18.75 in calendar year 2004 and, in each subsequent year, \$22 is \$22.75;.*

(f) logging trucks less than 1 ton, \$23.75;

~~(g)~~(7) (a) ~~motor homes, \$22.25; The annual registration fee for a motor home, based on the age of the motor home, is as follows:~~

(i) less than 2 years old, \$282.50;

(ii) 2 years old and less than 5 years old, \$224.25;

(iii) 5 years old and less than 8 years old, \$132.50; and

(iv) 8 years old and older, \$97.50.

(b) *The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:*

(i) a one-time registration fee of \$237.75; and

(ii) if applicable, five times the renewal fees for personalized plates under 61-3-406.

~~(h)~~(8) (a) *Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25 registered for use on public highways is \$53.25 and the one-time registration fee for motorcycles registered for both off-road use and for use on the public highways is \$114.50. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.*

(b) *An additional fee of \$16 must be collected for the registration of each motorcycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.*

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) ~~trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.~~

~~(k)~~(9) *Except as provided in subsection (15), the one-time registration fee for travel trailers under 16 feet in length, \$11.75 is \$72 and the one-time registration fee for travel trailers 16 feet in length or longer is \$152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.*

~~(l)~~ recreational vehicles, \$3.50 in calendar year 2004 and, in each subsequent year, \$9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(10) *Except as provided in subsection (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:*

(a) *for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;*

(b) *for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and*

(c) *for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.*

(11) (a) *Except as provided in subsections (11)(b) and (15), the one-time registration fee for a snowmobile is \$60.50.*

(b) (i) *A snowmobile that is licensed by a Montana business and that is owned exclusively for the purpose of daily rental to customers is assessed:*

(A) *a fee of \$40.50 in the first year of registration; and*

(B) *if the business reregisters the snowmobile for a second year, a fee of \$20.*

(ii) *If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).*

~~(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.~~

~~(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.~~

~~(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$5 in calendar year 2004 and, in each subsequent year, \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.~~

(12) *Except as provided in subsection (15), the one-time registration fee for a quadricycle is \$59.25.*

(4)(13) *A fee of \$5 for each set of new number plates must be collected when number plates a new set of standard license plates or a new single standard license plate provided for under 61-3-332(2) are 61-3-332 is issued. The \$5 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.*

~~(5)~~(14) *The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to light vehicles that are exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520.*

~~(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.~~

~~(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):~~

~~(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.~~

~~(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.~~

~~(b) The following vehicles are not subject to the fee:~~

~~(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;~~

~~(ii) off-highway vehicles registered pursuant to 23-2-817; and~~

~~(iii) vehicles bearing license plates described in 61-3-458(3)(d).~~

~~(8)(15) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335. Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, or snowmobile is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.~~

~~(9)(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.~~

~~(10)(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.~~

~~(18) The fees imposed by subsections (2) through (13) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.~~

~~(11)(19) (a) Unless a person exercises the option in subsection (11)(b) (19)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state general special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(e)(vii). Of the \$4 fee, the department shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.~~

~~(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to~~

use *the vehicle to visit* state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (11)(a) (19)(a). If a written election is made, the fee may not be collected.

(20) *This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.*

Section 149. Coordination instruction. If Senate Bill No. 318 is not passed and approved and Senate Bill No. 285 and [this act] are both passed and approved, then subsection (12) of 61-3-321 contained in [section 148 of this act] is void and internal references must be adjusted and subsection (8) of 61-3-321 contained in [section 148 of this act] must read as follows:

“(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles, ~~\$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25~~ registered for use on public highways is \$53.25 and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle and quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.”

Section 150. Coordination instruction. If Senate Bill No. 285, House Bill No. 35, and [this act] are all passed and approved, then 61-3-321(12) as amended by House Bill No. 35 must read as follows:

“(12) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in [section 4 of House Bill No. 35].”

Section 151. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 83] of Senate Bill No. 285, amending 61-3-333, is void.

Section 152. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-334 must be amended as follows:

~~“61-3-334. Expiration of registration on transfer~~ Transfer of ownership of motor vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, *trailer, semitrailer, or pole trailer*, ~~the registration of the motor vehicle shall expire and it shall be the duty of the transferor shall immediately to remove the license plates from the motor vehicle, trailer, semitrailer, or pole trailer.”~~

Section 153. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 97] of Senate Bill No. 285, amending 61-3-425, is void.

Section 154. Coordination instruction. If Senate Bill No. 285, which repeals 61-3-522, is not passed and approved and House Bill No. 541 and [this act] are both passed and approved, then 61-3-522 must be amended as follows:

~~“61-3-522. Schedule of fees for motor homes — permanent registration of motor homes — transfer of ownership.~~ (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	\$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older	65

(2) (a) ~~Except as provided in subsection (2)(b), the~~ *The age of a motor home is must be determined by subtracting the manufacturer's designated model year from the current calendar year under 61-3-501.*

(b) ~~If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

(3) (a) *The owner of a motor home that is 11 years old or older and that is subject to the registration fee under 61-3-321 may permanently register the motor home upon payment of:*

(i) *a one-time registration fee of \$237.75; and*

(ii) *if applicable, five times the renewal fees for personalized plates under 61-3-406.*

(b) *The following series of license plates may not be used for purposes of permanent registration of a motor home:*

(i) *Montana national guard license plates issued under 61-3-458(2)(b);*

(ii) *reserve armed forces license plates issued under 61-3-458(2)(c);*

(iii) *amateur radio operator license plates issued under 61-3-422;*

(iv) *collegiate license plates issued under 61-3-465; and*

(v) *generic specialty license plates issued under 61-3-479.*

(4) *The permanent registration of a motor home allowed by this section may not be transferred to a new owner. If the motor home is transferred to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and register the motor home under 61-3-303."*

Section 155. Coordination instruction. If Senate Bill No. 285, House Bill No. 541, and [this act] are all passed and approved, then subsection (3)(b) of 61-3-522, as it reads in [section 154 of this act] must be codified as a new section in Title 61, chapter 5, because 61-3-522 is repealed by Senate Bill No. 285.

Section 156. Coordination instruction. If Senate Bill No. 285, which repeals 61-3-527, is not passed and approved and House Bill No. 102 and [this act] are both passed and approved, then 61-3-527 must be amended as follows:

"61-3-527. One-time fee in lieu of tax for motorcycles and quadricycles — permanent registration. (1) (a) ~~There~~ *Except as provided in subsection (2), there is a one-time fee in lieu of property tax of \$20 in calendar year 2004 and, in each subsequent year, \$40 \$41.25 imposed on motorcycles and quadricycles that are subject to one-time registration. The fee is in addition to registration fees.*

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle with a special license plates *plate* issued under 61-3-415 shall pay an annual fee based on the age of the motorcycle or quadricycle and the size of the engine, according to the following schedule:

~~(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:~~

~~(i) less than 5 years old, \$30;~~

~~(ii) 5 years old but less than 11 years old, \$15; and~~

~~(iii) 11 years old and older, \$6 the one-time registration fee imposed under subsection (1) and the fees imposed under 61-3-415.~~

~~(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:~~

~~(i) less than 5 years old, \$55;~~

~~(ii) 5 years old but less than 11 years old, \$20; and~~

~~(iii) 11 years old and older, \$6.~~

~~(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:~~

~~(i) less than 5 years old, \$90;~~

~~(ii) 5 years old but less than 11 years old, \$50; and~~

~~(iii) 11 years old and older, \$6.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(4) A person who registers a motorcycle or quadricycle as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this subsection from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.~~

~~(5)(3) Whenever a transfer of ownership of a motorcycle or quadricycle occurs, the one-time fees required under this section must be paid by the new owner. (Subsection (4) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)~~

Section 157. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-701 must be amended as follows:

“61-3-701. Out-of-state vehicles used in gainful occupation to be registered — reciprocity. (1) ~~Before~~ *A person may not operate a motor vehicle, trailer, semitrailer, or pole trailer that is registered in another jurisdiction may be operated on the highways of this state if the vehicle is used for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle*

if the ~~owner or user~~ person is engaged in gainful occupation or business enterprise in the state, including highway work, ~~the owner of the vehicle shall register unless the motor vehicle, trailer, semitrailer, or pole trailer is registered~~ at the office of a county treasurer or an authorized agent of the department. Upon satisfactory evidence of ownership submitted to the county treasurer or the department's authorized agent and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by ~~15-8-201, 15-8-202, 15-24-301, 61-3-321, 61-3-529, or 61-3-537, or 61-3-560 and 61-3-561,~~ the treasurer or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101. *One-fourth of the annual fees or taxes due on the motor vehicle, trailer, semitrailer, or pole trailer subject to registration under this section must be paid for each calendar quarter or portion of a calendar quarter for the year that the vehicle will be located or operated in Montana.*

(2) Upon payment of the fees or taxes, the treasurer or the department's authorized agent shall issue to the ~~vehicle owner of the motor vehicle, trailer, semitrailer, or pole trailer~~ a registration receipt, ~~and the proper license plates, or other identification markers~~ and a registration decal indicating the calendar quarter and year for which the motor vehicle, trailer, semitrailer, or pole trailer is registered. The license plates, with attached registration decal, ~~or identification markers~~ must at all times be displayed upon the motor vehicle, trailer, semitrailer, or pole trailer when operated or driven upon roads and highways of this state during the registration period indicated on the receipt.

(3) The registration receipt does not constitute evidence of ownership but ~~must~~ may be used only for registration purposes. A Montana certificate of title may not be issued for a motor vehicle, trailer, semitrailer, or pole trailer registered under this section.

(4) This section is not applicable to a motor vehicle covered by a valid and existing reciprocal agreement or declaration entered into under Montana law."

Section 158. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 129] of Senate Bill No. 285, amending 61-3-707, is void.

Section 159. Coordination instruction. If Senate Bill No. 285, House Bill No. 55, and [this act] are all passed and approved, then [section 2] of House Bill No. 55, a coordination section, is void and 61-3-721 must be amended as follows:

"61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to motor vehicle, trailer, semitrailer, or pole trailer registration that is required by the department of transportation. *If an electronic record of title has not been created for or a certificate of title issued for an apportionable vehicle in the fleet, the department of transportation, as an authorized agent of the department of justice, may also process the application for certificate of title for the vehicle as provided in 61-3-203 and 61-3-217.*

(2) ~~Each~~ Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must, ~~except as provided in 61-3-318(1) and subsection (6) of this section,~~ be registered for an

annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31.....1st period
- (b) April 1 through June 30 2nd period
- (c) July 1 through September 30 3rd period
- (d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable *motor* vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable *motor* vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, *arrangement*, or *declaration* entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer* in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

~~(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.~~

~~(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.~~

~~(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.~~

~~(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.~~

~~(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.~~

~~(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name~~

~~the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.~~

~~(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.~~

~~(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.~~

~~(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate. Upon renewal or new registration, each trailer, semitrailer, or pole trailer fleet must be permanently registered and assessed a registration fee of \$82.50. Each trailer, semitrailer, or pole trailer in the fleet must be issued a permanent license plate and sticker.~~

~~(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer, semitrailer, or pole trailer.~~

~~(8) If the owner of a fleet removes a trailer, semitrailer, or pole trailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer, semitrailer, or pole trailer to the department of transportation. The owner may not transfer the license plate and sticker to a trailer, semitrailer, or pole trailer that is added to the fleet.~~

~~(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.~~

~~(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."~~

Section 160. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 159] of Senate Bill No. 285, amending 61-4-111, is void and [section 104 of this act], amending 61-4-111, must be amended as follows:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) Except as provided in 61-4-124(6), a licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under ~~61-3-201(2)~~ *61-3-302(3)* when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the vehicle may not be transferred until an application for a certificate of title has been submitted by the dealer to the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle *or trailer* to a person other than a licensed dealer, broker, or wholesaler, *a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle or trailer was transferred if the dealer is an authorized agent, as defined in [section 2 of House*

Bill No. 671]. In addition, the following acts are required of the dealer on or before the times set forth in this subsection:

~~(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue a temporary registration permit for the vehicle and affix the temporary registration permit to the vehicle in a manner prescribed by the department. The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance. There must be imprinted on the temporary registration permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". Unless a durable license plate style placard is issued, one copy of the temporary registration permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department. It is unlawful for the dealer to issue more than one 20-day temporary registration permit for each vehicle sale.~~

~~(b)(a)~~ Within ~~4 working~~ 30 calendar days following the date of delivery of the motor vehicle or trailer, the dealer shall forward to the county treasurer of the county where the ~~purchaser resides~~ vehicle is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the motor vehicle or trailer has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of ~~61-3-221 and 61-3-222~~ 61-3-216 and 61-3-220; and

(iii) a copy of the temporary registration permit affixed to the vehicle by the dealer.

~~(e)(b)~~ Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery, or by first-class mail, in which event they are considered to have been delivered at the time of mailing or by electronic means, as authorized by the department.

~~(d)(c)~~ If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection ~~(2)(b)~~ (2)(a) because the certificate of title is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection ~~(2)(b)~~ (2)(a) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle or trailer is considered to have passed to the purchaser as of the date of the delivery of the motor vehicle or trailer to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title if requested under 61-3-216(2)(f); and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.

~~(5) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."~~

Section 161. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 160] of Senate Bill No. 285, amending 61-4-112, is void and [section 105 of this act], amending 61-4-112, must be amended as follows:

"61-4-112. New motor vehicles — transfers by dealers. (1) (a) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall,:

~~(a) issue and affix a temporary registration permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the temporary registration permit or, if a durable license-plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department;~~

~~(b) within 4 working 30 calendar days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides motor vehicle is domiciled:~~

~~(i) one copy of the temporary registration permit issued under subsection (1)(a) or a copy of the information described in the records concerning a placard;~~

~~(ii)(i) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and~~

~~(iii)(ii) a manufacturer's certificate of origin that shows that the motor vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.~~

~~(b) If the dealer is an authorized agent, as defined in [section 2 of House Bill No. 671], a temporary registration permit may be issued under 61-3-224 to the person to whom the new motor vehicle was transferred.~~

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable."

Section 162. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 178] of Senate Bill No. 285, amending 61-4-310, is void.

Section 163. Coordination instruction. If House Bill No. 192 and [this act] are both passed and approved, then 61-5-114 must be amended as follows:

"61-5-114. Duplicate licenses *Replacement license or permit.* (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed *or a person wants to update personal information contained on an instruction permit or a driver's license issued to the person*, the person to whom ~~it the permit or license~~ was issued may, upon the payment of a fee of \$10, obtain a ~~duplicate or substitute~~ *replacement* permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed *or that personal information has changed*.

(2) If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in [section 2 of House Bill No. 192], the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement."

Section 164. Coordination instruction. If House Bill No. 102, House Bill No. 192, Senate Bill No. 285, and [this act] are all passed and approved then [section 165 of this act] is void and [section 22] of House Bill No. 192, amending 61-5-121, [section 191] of Senate Bill No. 285, amending 61-5-121, and [section 114 of this act], amending 61-5-121, are all void and [section 10] of House Bill No. 102, amending 61-5-121, is amended as follows:

"61-5-121. Disposition of fees. (1) ~~The~~ *Except as provided in subsection (3), the* disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and ~~duplicate replacement~~ driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee, *18.25% of each commercial driver's license fee*, and 25% of each ~~duplicate replacement~~ driver's license fee must be deposited into an account in the state special revenue fund. ~~The~~ *Upon receiving an appropriation, the* department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, *2.5% of each commercial driver's license fee*, and 3.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee, *16.94% of each commercial driver's license fee*, and 8.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), ~~the amount of 54.5% of each driver's license fee and 62.5% of each duplicate driver's license fee~~ *the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee* must be deposited into the state general fund.

~~(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.~~

~~(e)(f)~~ The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit *all remaining fees to the state for deposit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund.* The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through ~~(1)(g)~~ (1)(f).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall ~~remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund.~~ The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through ~~(1)(g)~~ (1)(f).

(3) *The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund."*

Section 165. Coordination instruction. If House Bill No. 102, Senate Bill No. 285, and [this act] are all passed and approved, then [section 191] of Senate Bill No. 285, amending 61-5-121, and [section 114 of this act], amending 61-5-121, are void and [section 10] of House Bill No. 102, amending 61-5-121, is amended as follows:

"61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

~~(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.~~

~~(b)(a)~~ (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection ~~(1)(b)(i)~~ (1)(a)(i) must be deposited into the state general fund.

~~(e)(b)~~ (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection ~~(1)(e)(i)~~ *(1)(b)(i)* must be deposited into the state general fund.

~~(d)(c)~~ The amount of 20.7% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

~~(e)(d)~~ In addition to the amounts deposited pursuant to subsections ~~(1)(b)(ii)~~ *(1)(a)(ii)* and ~~(1)(e)(ii)~~ *(1)(b)(ii)*, the amount of ~~54.5%~~ 76.8% of each driver's license fee and ~~62.5%~~ 87.5% of each duplicate driver's license fee must be deposited into the state general fund.

~~(f)(e)~~ If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

~~(g)(f)~~ The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections ~~(1)(b)(i)~~ *(1)(a)(i)* and ~~(1)(e)(i)~~ *(1)(b)(i)* into the county general fund. The county treasurer or agent shall then ~~remit all remaining fees to the state for deposit to the department of revenue~~ *remit all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g) (1)(c) through (1)(f).*

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall ~~remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(e)(ii), and (1)(d) through (1)(g) (1)(a)(ii), (1)(b)(ii), and (1)(c) through (1)(f).~~

Section 166. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 192] of Senate Bill No. 285, amending 61-5-208, is void.

Section 167. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 124 of this act], amending 76-2-302, is void.

Section 168. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2006.

(2) [Sections 1 through 6 and this section] are effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 597

[HB 689]

AN ACT ALLOWING THE RECAPTURE OF PROPERTY TAX INCENTIVES THAT DO NOT MEET THE REQUIREMENTS OF A TAX ABATEMENT FOR NEW AND EXPANDING INDUSTRY, BUILDING REMODELING, RECONSTRUCTION, AND EXPANSION, BUSINESS INCUBATORS, INDUSTRIAL PARKS, ECONOMIC DEVELOPMENT ORGANIZATIONS, AND VALUE-ADDED MANUFACTURING; AND AMENDING SECTIONS 15-24-1402, 15-24-1501, 15-24-1502, 15-24-1802, 15-24-1902, 15-24-2002, AND 15-24-2404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1402, MCA, is amended to read:

“15-24-1402. New or expanding industry — assessment — notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(d) *Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(c) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to*

meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

Section 2. Section 15-24-1501, MCA, is amended to read:

"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to 15-10-420 and the authority contained in subsection (4) of this section, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 1/2% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages must be applied as provided in subsections (3) and (4) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

(5) *Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."*

Section 3. Section 15-24-1502, MCA, is amended to read:

"15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval. (1) (a) Subject to the conditions of this section, remodeling, reconstruction, or expansion of an existing commercial building or structure that increases its taxable value by at least 5%, as determined by the department, may receive a property tax exemption during the construction period, not to exceed 12 months, and for up to 5 years following completion of construction. The property tax exemption is limited to 100% of the increase in taxable value caused by remodeling, reconstruction, or expansion.

(b) (i) In addition to the property tax exemption described in subsection (1)(a), the buildings and structures may receive a property tax reduction for 4 years following the exemption period as provided in this subsection (1)(b). The percentages must be applied to the increase in taxable value caused by remodeling, reconstruction, or expansion according to the following schedule:

First year following the exemption period	20%
Second year following the exemption period	40%
Third year following the exemption period	60%
Fourth year following the exemption period	80%
Fifth year following the exemption period	100%
Following years	100%

(ii) Mill levies are assessed against the reduced taxable value of the remodeling, reconstruction, or expansion determined under subsection (1)(b)(i).

(c) To be eligible for the property tax exemption and the property tax reduction, the commercial building or structure may not have been used in a

business for at least 6 months immediately preceding the date of application to the governing body for approval under subsection (2).

(2) (a) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or consolidated government or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the property tax exemption and property tax reduction.

(b) The governing body may not grant the property tax benefits described in subsection (1) if property taxes on the buildings or structures are delinquent.

(3) *Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."*

Section 4. Section 15-24-1802, MCA, is amended to read:

"15-24-1802. Business incubator tax exemption — procedure. (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1801, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Section 5. Section 15-24-1902, MCA, is amended to read:

"15-24-1902. Industrial park tax exemption — procedure — termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1901, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Section 6. Section 15-24-2002, MCA, is amended to read:

"15-24-2002. Building and land tax exemption — procedure — termination. (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Section 7. Section 15-24-2404, MCA, is amended to read:

"15-24-2404. Exclusion from other property tax reductions or exemptions — recapture. (1) If a taxable value decrease is taken pursuant to this part, other property tax reductions or exemptions, including but not limited to those provided in 15-6-135, 15-24-1402, and 15-24-1501, are not allowed for the qualifying property.

(2) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this part. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if

the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Approved May 6, 2005

CHAPTER NO. 598

[HB 700]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING THE DISPOSITION AND USE OF METALLIFEROUS MINES LICENSE TAX MONEY; INCREASING THE ALLOCATION OF FUNDS TO THE COUNTY IN WHICH THE MINE IS LOCATED; DECREASING THE ALLOCATION TO THE GENERAL FUND; REVISING THE NAMES OF ACCOUNTS FOR PURPOSES OF CLARIFICATION; CLARIFYING THE USE OF FUNDS ALLOCATED TO THE COUNTY; ELIMINATING THE METAL MINES TAX RESERVE ACCOUNT THAT COULD BE USED FOR ANY PURPOSE PROVIDED BY LAW; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2225, MCA, is amended to read:

"7-6-2225. County hard-rock mine ~~trust-reserve trust~~ account — expenditure restrictions. (1) The governing body of a county receiving an allocation under 15-37-117(1)(e) shall establish a county hard-rock mine ~~trust-reserve trust~~ account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the *hard-rock mine trust* account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all ~~mining-related~~ *mining-related* activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county and may use the remaining funds in the *hard-rock mine trust* account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit *through assistance to existing business for retention and expansion or to assist new business*;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the *hard-rock mine trust* account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the ~~reserve~~ *hard-rock mine trust* account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account."

Section 2. Section 7-6-2226, MCA, is amended to read:

"7-6-2226. Metal mines license tax ~~reserve~~ account. (1) The governing body of a county receiving tax collections under 15-37-117(1)(e) may establish a metal mines *license* tax ~~reserve~~ account to be used to hold the collections. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account ~~for any purpose as provided by law in 7-6-2225.~~

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines *license* tax ~~reserve~~ account must be credited to the account."

Section 3. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, ~~for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003, 58%~~ 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund created in 82-4-312, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, ~~for the fiscal years beginning on or after July 1, 2003, 7%~~ of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, ~~24%~~ 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine ~~trust-reserve trust~~ account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for *general planning functions* or economic development activities *as described in 7-6-2225(3)(c) through (3)(e)*;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.”

Section 4. Section 90-6-304, MCA, is amended to read:

“90-6-304. Accounts established. (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve ~~account~~ *amount* not to exceed \$100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve ~~account~~ *amount*; and

(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust ~~reserve~~ account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve ~~account~~ *amount* of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve ~~account~~ *in the* amount of \$100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board.”

Section 5. Section 90-6-331, MCA, is amended to read:

“90-6-331. Fund transfer. Prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust ~~reserve~~ account established in 90-6-304(2) as of September 30 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds transferred must be deposited in the county hard-rock mine ~~trust reserve~~ trust account established in 7-6-2225.”

Section 6. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 599

[HB 713]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE TO CREATE A TASK FORCE TO CONDUCT A MISSION ASSESSMENT FOR MILITARY AND NATIONAL GUARD INSTALLATIONS IN MONTANA AND TO PROMOTE THE ESTABLISHMENT OF NEW INSTALLATIONS AND EXPANDED MISSIONS; REQUIRING REPORTS AND RECOMMENDATIONS FROM THE TASK FORCE AND THE DEPARTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — mission assessment and promotion for military and national guard installations. (1) The amount of \$100,000 is appropriated from the state general fund to the department of commerce. The department shall use the appropriation to create a task force to conduct a mission assessment for military and national guard installations in Montana and to promote the establishment of new installations and expanded missions.

(2) The task force shall prepare a report and make recommendations to the department. Based upon the report and recommendations of the task force, the department shall, by September 1, 2006, prepare a report and recommendations for submission to the governor and the legislature as provided in 5-11-210.

(3) Any funds not expended specifically for the purposes of [this act] must revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2005

CHAPTER NO. 600

[HB 728]

AN ACT REVISING FUNDING FOR THE STATE VETERANS' CEMETERY PROGRAM; PROVIDING FOR A STATE VETERANS' CEMETERY IN MISSOULA COUNTY AND IN YELLOWSTONE COUNTY AS FUNDING ALLOWS; PROVIDING A STATUTORY APPROPRIATION OF SPECIAL REVENUE; AMENDING SECTIONS 10-2-601, 10-2-603, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-601, MCA, is amended to read:

“10-2-601. State veterans’ cemeteries — statutory appropriations. (1) The board shall establish and operate state veterans’ cemeteries.

(2) A cemetery must be located at Fort William Henry Harrison; ~~in Lewis and Clark County, Montana, and~~ and at Miles City. ~~A cemetery may be located in Missoula County and in Yellowstone County if funding allows. The board may establish a state veterans’ cemetery in Missoula County, Montana.~~

(3) The board may establish additional state veterans’ cemeteries *only* as funding ~~appropriated pursuant to 10-2-603~~ allows.”

Section 2. Section 10-2-603, MCA, is amended to read:

“10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the board for the state veterans’ cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to 15-1-122(3)(d) must be deposited into the account.

(3) ~~As appropriated by the legislature, money in the~~ The account is *statutorily appropriated, as provided in 17-7-502, to the board and* may be used only for the construction, maintenance, operation, and administration of the state veterans’ cemeteries.

(4) The board shall solicit veterans’ license plate sales and donations on behalf of the state veterans’ cemeteries.”

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; ~~10-2-603~~; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 601

[HB 740]

AN ACT CREATING THE ASBESTOS DISEASE ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE USED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR GRANTS TO THE LINCOLN COUNTY HEALTH BOARD FOR ASBESTOS-RELATED DISEASE PROGRAMS; APPROPRIATING MONEY FOR THE PROGRAMS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, hundreds of residents of Lincoln County, Montana, have been diagnosed with chronic asbestos-related diseases due to exposure to vermiculite from the Zonolite Mountain mine that was contaminated with tremolite asbestos, and this number continues to rise as more individuals are diagnosed; and

WHEREAS, these individuals, and many more, either now or in the future will need assistance both with paying medical expenses that are not covered by insurance and in meeting their own basic human needs due to the debilitating nature of asbestos-related diseases; and

WHEREAS, by providing case management and personal care assistance, many of these individuals will better utilize federal and private health care and social programs and be able to remain in their homes, creating savings to the state and county; and

WHEREAS, these individuals suffer from asbestos-related negative health impacts through no fault of their own; and

WHEREAS, there is still no permanent source of funding for medical and psychosocial care for Lincoln County asbestos patients, as the medical plan currently funded by W.R. Grace is voluntary and unregulated and federal grant funding that is currently paying for asbestos patient services is unlikely to be renewed; and

WHEREAS, there is currently no cure for either asbestosis or mesothelioma, and it is likely that autoimmune diseases, including rheumatoid arthritis and lupus, will be found to be linked to tremolite asbestos exposure, and there is no cure for these diseases either; and

WHEREAS, the unmet medical and social needs of asbestos patients in Lincoln County are disproportionate to the community's size and ability to meet these needs from county funds.

Be it enacted by the Legislature of the State of Montana:

Section 1. Asbestos disease account. There is an asbestos disease account in the state special revenue fund to be used by the department for grants to the Lincoln County health board to be used for the following purposes:

- (1) providing case management services for asbestos patients;
- (2) maintaining and overseeing a working network of Lincoln County health care and social service providers;
- (3) providing direct services to individuals who have a positive result as determined by a qualified physician for asbestos-related diseases;
- (4) evaluating the programs for effectiveness and quality; and
- (5) pursuing both short-term and permanent funding for health care and social service needs of asbestos patients.

Section 2. Fund transfer — appropriation. There is transferred \$175,000 from the general fund to the asbestos disease account provided for in [section 1]. The money in the account is appropriated to the department of public health and human services for the 2007 biennium to be used for grants to the Lincoln County health board for the purposes stated in [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 1, part 1, and the provisions of Title 50, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 602

[HB 757]

AN ACT ESTABLISHING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; CREATING A REVOLVING LOAN ACCOUNT; PROVIDING FUNDING FOR THE MONTANA ESSENTIAL FREIGHT RAIL ACT REVOLVING LOAN ACCOUNT; PROVIDING GUIDELINES FOR APPLICATIONS AND ELIGIBILITY FOR A LOAN FROM THE REVOLVING LOAN ACCOUNT; PROVIDING FOR MANAGEMENT OF THE ACCOUNT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Essential Freight Rail Act".

Section 2. Purpose. (1) Montana's railroad branch lines provide critical transportation to Montana businesses and communities. These lines are especially important to Montana's agricultural and wood products industries that rely on railroads to transport Montana products to national and international markets. The branch lines are also critical to efforts to increase or expand businesses that process Montana commodities into more valuable products.

(2) A state rail funding program will provide Montana with an important tool to help preserve and enhance Montana's branch lines.

(3) The purpose of [sections 1 through 4] is to provide low-interest loans to railroads, cities, counties, companies, or regional rail authorities for the purposes provided in 60-11-120 to preserve or enhance cost-effective rail service to Montana communities and businesses.

Section 3. Revolving loan account — statutory appropriation — rulemaking. (1) There is a revolving loan account to be administered by the department. Any interest or income that is earned by the account and loan repayments must be deposited into the revolving loan account unless revenue bonds are issued to fund a loan, in which case the loan repayments must be deposited in the debt service account. The department may request the board of investments to issue revenue bonds, as provided in [sections 7 through 9], for the purpose of providing funds for a loan.

(2) The department may make loans from the account pursuant to 60-11-120.

(3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight assistance programs or for railroad projects must be deposited in the account.

(4) There is statutorily appropriated, as provided in 17-7-502, to the department up to \$2 million annually for the purposes of making loans pursuant to 60-11-120.

(5) Loans may not be made if the loan would cause the balance in the account to be less than \$500,000.

(6) The department may adopt rules to implement [sections 1 through 4].

Section 4. Funding for account. Federal funds received for local freight assistance programs under former 49 U.S.C. 1654 in an amount up to \$1.1 million must be deposited in the account established in [section 3].

Section 5. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; [section 3]; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 6. Section 60-11-120, MCA, is amended to read:

"60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility. (1) Money appropriated by the legislature ~~may for the purposes provided for in this section and pursuant to [section 3] must be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for:~~

(a) the preservation and continued operation of railroad branch lines identified in 60-11-111; and

(b) ~~for the development, and improvement, construction, purchase, maintenance, or rehabilitation of:~~

(i) intermodal transportation facilities;

(ii) branch lines or short lines;

(iii) sidings;

(iv) light density railroad lines; and

(v) rolling stock, including rail cars. ~~Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund.~~

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan ~~or grant~~ under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan ~~or grant~~ under this section ~~for the development or improvement of an intermodal transportation facility under this section if:~~

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the ~~intermodal transportation facility~~ purpose for which a loan ~~or grant~~ is sought is integrally related to the railroad transportation system of the state.

(4) *Applications for a loan must include:*

(a) *a financial statement;*

(b) *evidence of matching funds required pursuant to subsection (5);*

(c) *an operating or business plan that demonstrates the applicant's ability to repay the funds; and*

(d) *upon request of the department, an independent feasibility study.*

(5) *Pursuant to requirements of former 49 U.S.C. 1654, which is providing a portion of the funds under [section 3], rehabilitation projects must be matched with 30% in other funds and new construction projects must be matched with 50% in other funds. The transportation commission, provided for in 2-15-2502, shall establish matching fund requirements for other project categories.*

(6) *The transportation commission is responsible for determining funding recipients. Recipients must be determined using the guidelines provided in 60-2-110.*

(7) *The department shall administer the Montana Essential Freight Rail Act with input from the department of commerce, the department of agriculture, and the governor's office.*

(8) *Funding recipients shall pay the standard prevailing wage on any construction projects or subcontracted construction projects conducted with funds received under this section."*

Section 7. Definitions. As used in [sections 7 through 9], the following definitions apply:

(1) "Board" means the board of investments established in 2-15-1808.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [sections 7 through 9] as essential freight rail revenue bonds.

(3) "Cost", as applied to any project, means any cost of any part of the project pursuant to 60-11-120.

(4) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

(5) "Revenue" means the revenue from the operation of a rail line loan repayments and any delinquency charges on loan repayments.

Section 8. Revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund an essential freight rail revenue bond debt service account. The state treasurer shall deposit revenue as may be

pledged to the payment of particular bonds to the credit of the essential freight rail revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the essential freight rail revenue bond debt service account for the payment of bonds. The remainder of pledged revenue is available for authorized purposes of the department. Money deposited in the separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon the funds, and the funds may be used for payment of bonds to the extent that revenue deposited in the essential freight rail revenue bond debt service account are not sufficient for those purposes.

(3) Interest and investment earnings on the separate accounts in subsections (1) and (2) must be retained in the separate accounts referred to in subsection (2).

Section 9. Authority to issue revenue bonds. The board may issue and sell essential freight rail revenue bonds to make loans to finance the cost of projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The bonds must be issued under Title 17, chapter 5, part 15.

Section 10. Codification instruction. [Sections 1 through 4 and 7 through 9] are intended to be codified as an integral part of Title 60, chapter 11, part 1, and the provisions of Title 60, chapter 11, part 1, apply to [sections 1 through 4 and 7 through 9].

Section 11. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 603

[HB 758]

AN ACT ESTABLISHING AN OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; REDIRECTING COAL SEVERANCE TAX LOCAL IMPACT FUNDS FROM THE SHARED ACCOUNT; ENACTING A TAX ON OIL AND GAS PRODUCTION THAT TIES TO THE UNUSED PORTION OF THE TAX RATE AUTHORITY OF THE BOARD OF OIL AND GAS CONSERVATION; PROVIDING THAT THE TAX PROCEEDS ARE DEPOSITED INTO THE OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; PROVIDING FOR A DISTRIBUTION BETWEEN COUNTY AND MUNICIPAL GOVERNMENTS OF THE COUNTY; AMENDING SECTIONS 15-35-108, 15-36-304, 15-36-331, AND 15-36-332, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Oil, gas, and coal natural resource account. There is an oil, gas, and coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7) and 15-36-331(2) must be deposited in the account.

Section 2. Section 15-35-108, MCA, is amended to read:

“15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of ~~7.75%~~ 5.02% must be credited to an account in the state special revenue fund to be allocated by the legislature for ~~local impacts~~, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) *The amount of 2.73% must be credited to the oil, gas, and coal natural resource account established in [section 1].*

~~(7)(8)~~ (a) Subject to subsections ~~(7)(b) and (7)(c)~~ (8)(b) and (8)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) for fiscal years beginning on or after July 1, 2003, \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

- (B) \$50,000 for a small business innovative research program;
- (C) \$425,000 for certified regional development corporations;
- (D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and
- (E) \$300,000 for export trade enhancement; and

(iv) \$600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection ~~(7)(b)~~ (8)(b) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~7.75%~~ 5.02% must be credited to an account in the state special revenue fund to be allocated by the legislature for ~~local impacts~~, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.73% must be credited to the oil, gas, and coal natural resource account established in [section 1].

~~(7)~~(8) (a) Subject to subsection ~~(7)(b)~~ (8)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~7.75%~~ 5.02% must be credited to an account in the state special revenue fund to be allocated by the legislature for ~~local impacts~~, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) *The amount of 2.73% must be credited to the oil, gas, and coal natural resource account established in [section 1].*

~~(7)~~(8) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 3. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1)

The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%

(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) stripper well exemption production	0.5%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production. Stripper well exemption production is taxed as provided in subsection (5)(c) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel.

(d) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the *total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b).*

(b) *The total of the privilege and license tax and the tax for the oil, gas, and coal natural resource account may not exceed 0.3%. The base rate for the tax for oil, gas, and coal natural resource account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:*

(i) *exceeds 0.22%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or*

(ii) *is less than 0.18%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.*

(c) *The board of oil and gas conservation must give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil, gas, and coal natural resource account is effective at the same time that the board of oil and gas conservation rate is effective."*

Section 4. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) *The amount of the tax for the oil, gas, and coal natural resource account established in [section 1] must be deposited in the account.*

(3) (a) ~~For tax year 2003 and succeeding each tax years year,~~ the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	~~2003~~	~~2004~~	2005	2006 and succeeding tax years
Big Horn	~~45.03%~~	~~45.04%~~	45.04%	45.05%
Blaine	~~57.56%~~	~~57.84%~~	58.11%	58.39%

Ch. 603	MONTANA SESSION LAWS 2005			2866
Carbon	~~50.24%~~	~~49.59%~~	48.93%	48.27%
Chouteau	~~56.67%~~	~~57.16%~~	57.65%	58.14%
Custer	~~103.63%~~	~~92.27%~~	80.9%	69.53%
Daniels	~~48.31%~~	~~49.15%~~	49.98%	50.81%
Dawson	~~56.32%~~	~~53.48%~~	50.64%	47.79%
Fallon	~~39.89%~~	~~40.52%~~	41.15%	41.78%
Fergus	~~112.2%~~	~~97.86%~~	83.52%	69.18%
Garfield	~~54.51%~~	~~51.66%~~	48.81%	45.96%
Glacier	~~76.56%~~	~~70.65%~~	64.74%	58.83%
Golden Valley	~~55.5%~~	~~56.45%~~	57.41%	58.37%
Hill	~~66.97%~~	~~66.15%~~	65.33%	64.51%
Liberty	~~63.32%~~	~~61.53%~~	59.73%	57.94%
McCone	~~58.75%~~	~~55.81%~~	52.86%	49.92%
Musselshell	~~57.06%~~	~~54.25%~~	51.44%	48.64%
Petroleum	~~67.8%~~	~~61.21%~~	54.62%	48.04%
Phillips	~~53.3%~~	~~53.54%~~	53.78%	54.02%
Pondera	~~104.14%~~	~~87.51%~~	70.89%	54.26%
Powder River	~~64.7%~~	~~63.44%~~	62.17%	60.9%
Prairie	~~38.43%~~	~~39.08%~~	39.73%	40.38%
Richland	~~45.23%~~	~~45.97%~~	46.72%	47.47%
Roosevelt	~~46.75%~~	~~46.4%~~	46.06%	45.71%
Rosebud	~~37.41%~~	~~38.05%~~	38.69%	39.33%
Sheridan	~~46.64%~~	~~47.09%~~	47.54%	47.99%
Stillwater	~~56.05%~~	~~55.2%~~	54.35%	53.51%
Sweet Grass	~~58.23%~~	~~59.24%~~	60.24%	61.24%
Teton	~~53.01%~~	~~50.71%~~	48.4%	46.1%
Toole	~~56.2%~~	~~56.67%~~	57.14%	57.61%
Valley	~~59.82%~~	~~57.02%~~	54.22%	51.43%
Wibaux	~~47.71%~~	~~48.19%~~	48.68%	49.16%
Yellowstone	~~50.69%~~	~~49.37%~~	48.06%	46.74%
All other counties	~~50.15%~~	~~50.15%~~	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) ~~for the fiscal year ending June 30, 2003, to be distributed as follows:~~

(i) ~~a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~

~~(ii) all remaining proceeds to the state general fund;~~

~~(b)(a)~~ for the *each* fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

~~(e)(b)~~ for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund."

Section 5. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation. (1)

(a) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) *By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil, gas, and coal natural resource account under 15-36-331(2)(b) as provided in subsection (8).*

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%

Ch. 603	MONTANA SESSION LAWS 2005			2868
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) *The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town*

allocation must be distributed to the cities and towns based on their relative populations.

(8)(9) The ~~distribution~~ *distributions* to taxing units *and to counties and incorporated cities and towns* under this section ~~is~~ *are* statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.”

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [section 1].

Section 8. Coordination instruction. If House Bill No. 482 and [this act] are passed and approved, then:

(1) the percentage figure referred to in each version of 15-35-108(3) in House Bill No. 482 and [this act] must be 5.46%; and

(2) the percentage figure referred to in each version of 15-35-108 allocating money to the oil, gas, and coal natural resource account must be 2.9%.

Section 9. Effective date. [This act] is effective July 1, 2005.

Section 10. Applicability. [This act] applies to oil and gas production occurring after June 30, 2005.

Approved May 6, 2005

CHAPTER NO. 604

[HB 761]

AN ACT CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MEMBERS OF THE MONTANA NATIONAL GUARD AND RESERVE WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS' ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) the Montana national guard and reserve have a proud tradition of military service with thousands of Montanans having answered the call of the nation and having served in the national guard and reserve;

(b) there have been instances in which the dependents of members of the Montana national guard and reserve have been left without adequate financial resources when a national guard or reserve member has been killed while on active duty;

(c) members of the Montana national guard and reserve are now being asked to serve extended periods of active duty in combat areas;

(d) members of the Montana national guard and reserve are eligible for life insurance policies with limits of up to \$250,000 through the federal service members' group life insurance program; and

(e) members of the Montana national guard and reserve provide Montana and its citizens valuable benefits through the members' service inside this state and through the members' recently extended periods of active duty in combat areas outside of Montana, and in exchange for these extended periods of active duty they should receive assistance with the premiums that members pay for the federal service members' group life insurance program.

(2) The purpose of creating and funding the account established in [section 3] is to provide a benefit to members of the Montana national guard and reserve in exchange for and in recognition of the members' assumption of extended periods of active duty in a contingency operation, in addition to the members' increased contributions to the safety and welfare of the citizens of Montana.

Section 2. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 U.S.C. 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "National guard" has the meaning provided in 10-1-101.

(4) "Reserve" means a member of a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(5) "Service member" means a member of the national guard or reserve.

Section 3. Account for service members' life insurance. (1) There is an account in the state treasury that is composed of statutory deposits to the account and includes any gifts, grants, donations, or bequests to the account and earnings from investing the money in the account.

(2) Money in the account must be used as provided in [section 4] to reimburse service members serving on active duty in a contingency operation for the premiums paid, if any, for service members' group life insurance.

Section 4. Military service members' life insurance — reimbursement — eligibility. (1) (a) Subject to subsections (1)(b) and (1)(c), the department shall reimburse eligible service members for premiums paid for benefits under the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980.

(b) A service member is eligible for reimbursement of group life insurance premiums only if the service member paid premiums for service members' life insurance available under 38 U.S.C. 1965 through 1980 after [the effective date of this act] and the service member served on active duty in a contingency operation after [the effective date of this act].

(c) The maximum amount of premium to be reimbursed may not exceed \$16.25 a month for each month during which the member was on active duty in a contingency operation and purchased service members' group life insurance pursuant to 38 U.S.C. 1965 through 1980.

(2) The amount received by a service member as reimbursement for group life insurance premiums paid is considered to be a bonus for the purposes of taxation.

(3) The department shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement account and to implement the reimbursement program.

(4) This section does not alter, amend, or change the eligibility or applicability of the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980 or any rights, responsibilities, or benefits under the program.

Section 5. Section 15-30-116, MCA, is amended to read:

"15-30-116. Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any this chapter. Any income tax which that has been or may hereafter be paid on income received from this source shall be the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and shall must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) *The amount received pursuant to [section 4] or from the federal government by a service member, as defined in [section 2], as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.*"

Section 6. Appropriation — periodic transfer — reversion. (1) There is transferred from the general fund to the account established in [section 3] to reimburse the premiums for service members' life insurance \$60,000 for fiscal year 2005, \$300,000 for fiscal year 2006, and \$300,000 for fiscal year 2007. The amount transferred is appropriated to the department of military affairs to be used as provided in [sections 1 through 4].

(2) Subject to subsection (1), the director of the department of military affairs shall, as necessary to administer the program for reimbursing service members for premiums paid for group life insurance under [sections 1 through 4], request the state treasurer to transfer sufficient funds from the general fund to the account established in [section 3]. The state treasurer shall comply with the request.

(3) Any unexpended or unencumbered balance remaining in the account at the end of a fiscal year reverts to the general fund.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [sections 1 through 4].

Section 8. Effective date — applicability. [This act] is effective on passage and approval and applies to premiums paid after [the effective date of this act] for service members' life insurance by a service member serving on active duty in a contingency operation after [the effective date of this act].

Section 9. Termination. (1) [This act] terminates on the last day of the first month in which:

(a) the amount of the death gratuity provided for in 10 U.S.C. 1478 for a service member is at least \$250,000;

(b) the United States government directly pays for the premiums under the service members' group life insurance program provided for in 38 U.S.C. 1965 through 1980 for at least \$250,000 of coverage for the death of a service member; or

(c) the amount of the death gratuity provided for in 10 U.S.C. 1478 plus the amount of coverage for which the United States government directly pays for the premiums under the service members' group life insurance program provided for in 38 U.S.C. 1965 through 1980 for a service member totals at least \$250,000.

(2) A service member, as defined in [section 2], who is on active duty in a contingency operation after [the effective date of this act] is considered a service member for the purposes of this section.

(3) For the purposes of this section, the definitions for "active duty" and "contingency operation" provided in [section 2] apply.

Approved May 6, 2005

CHAPTER NO. 605

[HB 769]

AN ACT CREATING THE RAIL SERVICE COMPETITION COUNCIL; ESTABLISHING THE MEMBERSHIP AND DUTIES OF THE COUNCIL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

(a) the director of the department of agriculture provided for in 2-15-3001;

(b) the director of the department of transportation provided for in 2-15-2501;

(c) the director of the department of revenue provided for in 2-15-1301;

(d) the chief business development officer of the office of economic development provided for in 2-15-218;

(e) six people appointed by the governor with the following qualifications:

(i) one person with substantial knowledge and experience related to Class I railroads;

(ii) one person with substantial knowledge and experience related to Class II railroads;

(iii) one person who is a farm commodity producer in the state of Montana and who has substantial knowledge and experience related to transportation of farm commodities;

(iv) one person with substantial knowledge and experience in the trucking industry in the state of Montana;

(v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state of Montana; and

(vi) one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and

(f) two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer.

(2) The rail service competition council shall perform the following duties:

(a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;

(b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;

(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.

(d) develop various means to assist Montanans impacted by high rates and poor rail service;

(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;

(f) provide advice and recommendations to the department of transportation for the department's rail planning activities pursuant to Title 60, chapter 11, part 1;

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and

(h) act as the state's liaison in working with Class I railroads to promote rail service competition.

(3) The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

Section 2. Appropriation. There is appropriated up to \$50,000 from the department of transportation's highway revenue account in the state special revenue fund to the rail service competition council for each of fiscal years 2006 and 2007 in order to carry out the duties required in [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 757 and [this act] are both passed and approved, then [section 1(2)(f) of this act] must read as follows:

“(f) provide advice and recommendations to the department of transportation on the department's activities under [sections 1 through 4 of House Bill No. 757];”

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved May 6, 2005

CHAPTER NO. 606

[SB 120]

AN ACT REVISING AND EXTENDING THE UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; INCLUDING CRITICAL ACCESS FACILITIES IN THE DEFINITION OF “HOSPITAL”; AMENDING SECTIONS 15-66-101, 15-66-102, AND 15-66-201, MCA, AND SECTION 20, CHAPTER 390, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-66-101, MCA, is amended to read:

“15-66-101. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) (a) “Hospital” means a facility licensed as a hospital pursuant to Title 50, chapter 5, *and includes a critical access hospital*.

(b) The term does not include Montana state hospital.

(2) (a) “Inpatient bed day” means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and *is* counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 216 of the centers for medicaid and medicare services publication 10, the Hospital Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) “Patient” means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in 15-66-201.

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in 15-66-102. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, 2005 2007—sec. 20, Ch. 390, L. 2003.)"

Section 2. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee ~~in the amount of:~~

~~(a) \$32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003; and~~

~~(b)(a) in the amount of \$19.43 for each inpatient bed day between January 1, 2004, and June 30, 2005;~~

~~(b) in the amount of \$29.75 for each inpatient bed day between July 1, 2005, and December 31, 2005;~~

~~(c) in the amount of \$27.70 for each inpatient bed day between January 1, 2006, and December 31, 2006; and~~

~~(d) after January 1, 2007, in an amount determined by rule as provided in subsection (2).~~

~~(2) Prior to each calendar year that will be subject to the fee, the department by rule shall determine the amount of the fee, not to exceed \$50, based upon:~~

~~(a) an estimate of the unpaid medicaid hospital costs, total inpatient days, and the federal medical assistance percentages;~~

~~(b) an estimate of any federal limit on federal financial participation for hospital services; and~~

~~(c) an estimate of federal disproportionate share funds not matched by state general funds.~~

~~(2)(3) (a) All proceeds from the collection of utilization fees, including penalties and interest, must be deposited to the credit of the department of public health and human services in a state special revenue fund account as provided in 53-6-149.~~

~~(b) A hospital may not place a fee created in this chapter on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, 2005 2007—sec. 20, Ch. 390, L. 2003.)"~~

Section 3. Section 15-66-201, MCA, is amended to read:

"15-66-201. (Temporary) Reporting and collection of fee. (1) ~~(a)~~ On or before January 31, 2004 2006, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during each of the 6-month period periods beginning January 1, 2005, and ending June 30, 2005, and beginning July 1, 2003 2005, and ending December 31, 2003 2005. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the appropriate fee required to be paid under 15-66-102(1)(a).

~~(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003.~~

(2) (a) Except as provided in subsection (1), on or before January 31 of each year, a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding year beginning January 1 and ending December 31. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-66-102~~(1)(b)~~.

(b) ~~Except as provided in subsection (1), on~~ On or before January 31 of each year, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the preceding year beginning January 1 and ending December 31. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, ~~2005~~ 2007—sec. 20, Ch. 390, L. 2003.)”

Section 4. Section 20, Chapter 390, Laws of 2003, is amended to read:

“Section 20. Termination. [This act] terminates June 30, ~~2005~~ 2007.”

Section 5. Cessation on collection and expenditure. The collection of the utilization fee under 15-66-102 and 15-66-201 and related expenditures of the revenue authorized in House Bill No. 2 must cease if a court issues a final order that the state expenditure limit contained in 17-8-106 has been exceeded. If expenditures of the revenue authorized in House Bill No. 2 cease, any collected but unexpended utilization fees must be returned to the hospital.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [This act] terminates June 30, 2007.

Approved May 5, 2005

CHAPTER NO. 607

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2007; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as “The General Appropriations Act of 2005”.

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2007 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as “Biennial” may be spent in either year of the biennium. An appropriation item designated “Restricted” may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated “One Time Only” or “OTO” may not be included in the present law base for the 2009 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and

human resource system for any item designated as “Biennial”, “Restricted”, “One Time Only”, or “OTO”. The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], “program” has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinarily numbered with an arabic numeral.

Section 6. Personal services funding — 2009 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2009 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2009 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 8. Effective date. [This act] is effective July 1, 2005.

Section 9. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 2006			Other	Total	General Fund	State Special Revenue	Fiscal 2007			Other	Total
	General Fund	State Special Revenue	Federal Special Revenue					Proprietary	Proprietary	Federal Special Revenue		
A. GENERAL GOVERNMENT AND TRANSPORTATION												
LEGISLATIVE BRANCH (1104)												
1. Legislative Services (20) (Biennial)												
4,438,074	858,175	0	0	0	5,296,249	4,842,848	379,585	0	0	0	0	5,222,433
a. Interim School Funding Study (Restricted/Biennial/OTO)												
200,000	0	0	0	0	200,000	0	0	0	0	0	0	0
2. Legislative Committees and Activities (21) (Biennial)												
419,732	0	0	0	0	419,732	198,830	0	0	0	0	0	198,830
3. Fiscal Analysis and Review (27) (Biennial)												
1,271,142	0	0	0	0	1,271,142	1,312,797	0	0	0	0	0	1,312,797
4. Audit and Examination (28) (Biennial)												
1,778,408	1,501,291	0	0	0	3,279,699	1,909,158	1,361,872	0	0	0	0	3,271,030
a. Legislative Audit of Public Defender Services — SB 146 (OTO)												
88,155	0	0	0	0	88,155	0	0	0	0	0	0	0
Total												
8,195,511	2,359,466	0	0	0	10,554,977	8,263,633	1,741,457	0	0	0	0	10,005,090
Interim School Funding Study is for an interim study of the school funding formula.												
If Senate Bill No. 146 is not passed and approved, Audit and Examination is reduced by \$88,155 in general fund money in fiscal year 2006.												
CONSUMER COUNSEL (1112)												
1. Administration Program (01)												
0	1,160,767	0	0	0	1,160,767	0	1,170,980	0	0	0	0	1,170,980
a. Caseload Contingency Fund (Restricted)												
0	250,000	0	0	0	250,000	0	250,000	0	0	0	0	250,000

	General Fund	State Special Revenue	Fiscal 2006			Total	General Fund	State Special Revenue	Fiscal 2007			Other	Total
			State Special Revenue	Proprietary	Other				Federal Special Revenue	Proprietary	Other		
Total	0	1,410,767	0	0	0	1,410,767	0	1,420,980	0	0	0	0	1,420,980
JUDICIARY (2110)													
1. Supreme Court Operations (01)													
5,399,501	173,530	192,510	0	0	0	5,765,541	5,357,696	181,370	192,310	0	0	0	5,731,376
a. Legislative Audit (Restricted/Biennial)													
38,461	0	0	0	0	0	38,461	0	0	0	0	0	0	0
b. Software Licenses (Restricted/Biennial/OTO)													
1,095,000	0	0	0	0	0	1,095,000	0	0	0	0	0	0	0
2. Boards and Commissions (02)													
228,744	25,000	0	0	0	0	253,744	228,574	25,000	0	0	0	0	253,574
a. Judicial Standards Investigation (Restricted/Biennial)													
25,000	0	0	0	0	0	25,000	0	0	0	0	0	0	0
3. Law Library (03)													
811,952	0	0	0	0	0	811,952	820,249	0	0	0	0	0	820,249
4. District Court Operations (04)													
29,979,801	150,000	500,000	0	0	0	30,629,801	22,178,591	150,000	500,000	0	0	0	22,828,591
a. Court Reporting Equipment (Restricted/Biennial/OTO)													
34,495	0	0	0	0	0	34,495	0	0	0	0	0	0	0
~~b. Authority for County Paid Leave (Restricted/Biennial)~~													
~~0~~	~~642,548~~	~~0~~	~~0~~	~~0~~	~~0~~	~~642,548~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
c. Judicial Education (Restricted/Biennial)													
50,000	0	0	0	0	0	50,000	50,000	0	0	0	0	0	50,000
5. Water Courts Supervision (05)													
0	1,183,880	0	0	0	0	1,183,880	0	1,183,010	0	0	0	0	1,183,010
6. Clerk of Court (06)													
387,493	0	0	0	0	0	387,493	387,451	0	0	0	0	0	387,451

	Fiscal 2006			Fiscal 2007			Total	Other	Proprietary	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue									
Total															
38,050,447	2,174,958	692,510	0	40,917,915	29,022,561	1,539,380	692,310	0	0	31,254,251					
If Senate Bill No. 146 is not passed and approved, Supreme Court Operations is increased by \$43,725 in general fund money in fiscal year 2007. If Senate Bill No. 146 is not passed and approved, District Court Operations is decreased by \$209,508 in general fund money in fiscal year 2006 and increased by \$8,093,435 in general fund money in fiscal year 2007.															
If Senate Bill No. 406 is not passed and approved, Supreme Court Operations is reduced by \$23,530 in fiscal year 2006 and by \$31,370 in fiscal year 2007 in state special revenue.															
If House Bill No. 536 is not passed and approved, Supreme Court Operations is decreased by \$1,935,000 in general fund money in each fiscal year of the 2007 biennium.															
If Senate Bill No. 18 is not passed and approved, District Court Operations is reduced by \$157,477 in general fund money in fiscal year 2006 and by \$270,615 in general fund money in fiscal year 2007.															
If Senate Bill No. 355 is not passed and approved, District Court Operations is reduced by \$5,000 in general fund money in each fiscal year of the biennium.															
If House Bill No. 22 is not passed and approved, Water Courts Supervision funding is reduced by \$416,690 in state special revenue in each year of the biennium.															
GOVERNOR'S OFFICE (3101)															
1. Executive Office Program (01)															
2,531,284	72,180	0	0	2,603,464	2,529,059	71,980	0	0	0	2,601,039					
a. Legislative Audit (Restricted/Biennial)															
32,544	0	0	0	32,544	0	0	0	0	0	0	0	0	0	0	0
b. Computer Equipment Replacement (OTO)															
40,736	0	0	0	40,736	21,641	0	0	0	0	21,641					
c. Increased Budget for Governor's Office (OTO)															
62,587	0	0	0	62,587	53,815	0	0	0	0	53,815					
d. Marketing and Business Recruitment (Biennial)															
300,000	0	0	0	300,000	300,000	0	0	0	0	300,000					

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
2. Mansion Maintenance Program (02)							
86,527	0	0	0	86,527	0	0	86,395
a. Mansion Budget Increase (OTO)							
25,000	0	0	0	25,000	0	0	25,000
3. Air Transportation Program (03)							
274,417	20,000	0	0	294,417	20,000	0	284,366
4. Office of Budget and Program Planning (04)							
1,372,665	0	0	0	1,372,665	0	0	1,383,163
a. Legislative Audit (Restricted/Biennial)							
16,272	0	0	0	16,272	0	0	0
5. Indian Affairs (05)							
156,675	0	0	0	156,675	0	0	156,394
6. Lieutenant Governor (12)							
271,950	0	0	0	271,950	0	0	271,368
7. Citizens' Advocate Office (16)							
69,675	0	20,000	0	89,675	0	20,000	89,472
8. Mental Disabilities Board of Visitors (20)							
346,776	0	0	0	346,776	0	0	341,343
Total							
5,587,108	92,180	20,000	0	5,699,288	91,980	20,000	5,613,996

The Marketing and Business Recruitment program of the governor's office shall develop goals, objectives, and performance indicators and submit interim reports to the legislative finance committee for the categories of personal services, institutional advertising, website activity, travel, trade show activity, target research, promotional materials, and telecommunications of the marketing Montana and business recruitment program. A written summary of interim reports must be presented to the government and transportation subcommittee at the 2007 legislative session. The dates and contents of the interim reports are as follows:

(1) by July 31, 2005, provide a list of the intended results of each category. For each result, one of which must include the names of successfully recruited businesses and number of jobs created, the staff shall provide a list of the performance indicators that will be used to measure the result, indicate who is responsible for ensuring attainment, and include a specific timeline indicating the stages and time needed to reach attainment.

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
(2) by July 1, 2006, provide a report on the success of meeting intended results, including measures of the performance indicators, reasons for not meeting any intended results (if applicable), changes that are needed to meet intended results, changes to performance indicators, changes to timelines, and whether intended results are attainable; and						
(3) by November 15, 2006, provide an update to the July 1, 2006, report on the success of meeting intended results, including measures of the performance indicators, accomplishments to date, and, if necessary, reasons for not meeting any intended results.						
If Senate Bill No. 385 is not passed and approved, Mental Disabilities Board of Visitors is reduced by \$36,008 in fiscal year 2006 and by \$30,860 in fiscal year 2007 in general fund money.						
SECRETARY OF STATE (3201)						
1. Business and Government Services (01)	0	0	5,469,529	0	0	5,469,529
Total	0	0	5,469,529	0	0	5,469,529
COMMISSIONER OF POLITICAL PRACTICES (3202)						
1. Administration (01)						
350,062	0	0	0	0	0	350,062
a. Legislative Audit (Restricted/Biennial)						
6,509	0	0	0	0	0	6,509
b. Computer Equipment Replacement/Upgrade (OTO)						
6,365	0	0	0	0	0	6,365
Total	362,936	0	0	0	0	362,936
OFFICE OF THE STATE AUDITOR (3401)						
1. Central Management (01)						
0	579,161	0	0	0	0	579,161

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
a. Legislative Audit (Restricted/Biennial)	0	5,532	0	0	0	0	0
2. Insurance Program (03)	0	2,912,107	0	0	2,910,330	0	2,910,330
a. Legislative Audit (Restricted/Biennial)	0	24,083	0	0	0	0	0
b. Contract Examinations (Restricted)	0	227,820	0	0	283,544	0	283,544
c. Montana Comprehensive Health Association (Restricted)	0	573,215	0	0	573,215	0	573,215
d. Captive Insurance Examinations (Restricted)	0	19,200	0	0	19,200	0	19,200
e. Premium Assistance for Small Employers — HB 667 (Restricted)	0	1,671,375	0	0	5,899,001	0	5,899,001
f. Provide Tax Relief in the Form of Tax Credits — HB 667	0	1,200,000	0	0	3,976,330	0	3,976,330
3. Securities (04)	0	683,772	0	0	689,887	0	689,887
a. Legislative Audit (Restricted/Biennial)	0	5,858	0	0	0	0	0
b. Contract Examinations (Restricted)	0	60,792	0	0	65,792	0	65,792
Total	0	7,962,915	0	0	14,995,960	0	14,995,960

Funding in Premium Assistance for Small Employers and Provide Tax Relief in the Form of Tax Credits is contingent upon passage and approval of House Bill No. 667 and may be used only to implement House Bill No. 667. If the department of public health and human services is successful in obtaining a medicaid 1115 waiver for a premium incentive or premium assistance program, the state auditor's office shall transfer \$994,000 in state special revenue in fiscal year 2007 to the department of public health and human services to be used to match federal medicaid funds.

	Fiscal 2006			Total	Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue		General Fund	State Special Revenue	Federal Special Revenue	

Funding for Premium Assistance for Small Employers and Provide Tax Relief in the Form of Tax Credits includes the support of 3 new FTE.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01) (Biennial)								
0 19,061,913	731,920	0	0	19,793,833	0	19,276,705	786,461	20,063,166
a. Legislative Audit (Restricted/Biennial)								
0 133,136	0	0	0	133,136	0	0	0	0
b. Commercial Vehicle Operations Enhancements (OTO)								
0 103,007	86,484	0	0	189,491	0	64,629	54,262	118,891
2. Construction Program (02) (Biennial)								
0 117,550,637	282,192,809	0	0	399,743,446	0	120,516,453	290,618,785	411,135,238
a. Bridge Inspection Capital Equipment (OTO)								
0 140,000	860,000	0	0	1,000,000	0	0	0	0
b. Federal Earmarks (OTO)								
0 831,810	10,466,000	0	0	11,297,810	0	50,000	3,390,000	3,440,000
3. Maintenance Program (03) (Biennial)								
0 90,753,483	7,306,779	0	0	98,060,262	0	90,769,973	7,431,416	98,201,389
a. Remote Weather Information System Expansion (OTO)								
0 131,375	0	0	0	131,375	0	131,375	0	131,375
b. Lewis and Clark 511 Federal Earmark (OTO)								
0 0	900,000	0	0	900,000	0	0	0	0
4. Motor Carrier Services Division (22)								
0 5,787,856	1,050,000	0	0	6,837,856	0	5,822,978	1,400,000	7,222,978
a. Computer Programming — HB 55 (OTO)								
0 10,000	0	0	0	10,000	0	0	0	0
5. Aeronautics Program (40)								
0 795,883	42,046	0	0	837,929	0	794,500	42,057	836,557
a. Airport Grants (Biennial)								

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	0	1,033,000	0	0	0	0	0
b. System Plan (Biennial)							
	0	17,500	332,500	0	0	0	0
c. West Yellowstone Airport (Biennial/OTO)							
	0	0	285,000	0	0	0	0
d. Lincoln Airport Runway Rehabilitation (Biennial/OTO)							
	0	119,987	2,279,763	0	7,487	142,263	149,750
e. Aircraft Engine (Biennial/OTO)							
	0	32,000	0	0	0	0	0
f. Aircraft Purchase (Biennial/OTO)							
	0	324,000	0	0	0	0	0
6. Transportation Planning Division (50) (Biennial)							
	0	2,264,925	8,285,144	0	2,254,428	8,296,778	10,551,206
a. Corridor Studies (OTO)							
	0	75,000	300,000	0	0	0	0
Total	0	239,165,512	315,118,445	0	239,688,528	312,162,022	551,850,550

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All federal special revenue appropriations in the department are biennial.

All appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions, for the 2005 biennium are authorized to continue and are appropriated in fiscal year 2006 and fiscal year 2007.

[The department shall provide a report to the general government and transportation joint appropriations subcommittee of the 2007 legislature that summarizes the accomplishments achieved from funding provided in the 2007 biennium for disadvantaged business enterprises and fuel tax evasion included in General

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total

Operations Program and Corridor Studies. The report must at a minimum specify how many disadvantaged businesses were served and what services were provided. For each listed funding area, the report must include a listing of outcome goals planned for the 2007 biennium and the actual activities toward attaining the goals.]

Computer Programming is contingent upon passage and approval of House Bill No. 55.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)							
2,077,468	0	0	27,332	0	2,104,800	2,077,671	0
a. Legislative Audit (Restricted/Biennial)							
170,797	0	800	0	0	171,597	0	0
b. Replace Remainder of POINTS (Restricted/Biennial/OTO)							
3,000,000	0	0	0	0	3,000,000	1,000,000	0
2. Information Technology (02)							
3,264,485	0	0	68,330	0	3,332,815	3,903,588	0
3. Resource Management (05)							
991,141	0	0	1,235,142	0	2,226,283	989,824	0
4. Customer Service Center (06)							
4,794,495	421,441	92,400	784,625	0	6,092,961	4,780,586	0
a. Child Support Debt Collection Costs (Restricted/Biennial)							
73,730	0	0	0	0	73,730	73,730	0
b. Delinquent Income Tax Receivable Collection (OTO)							
8,400	0	0	0	0	8,400	0	0
5. Business and Income Taxes Division (07)							
5,096,954	150,480	205,221	0	0	5,452,655	5,106,724	0
a. Tax Compliance Staff (Restricted/Biennial)							
1,120,000	0	0	0	0	1,120,000	0	0
6. Property Assessment Division (08)							
15,243,834	50,000	0	0	0	15,293,834	15,352,506	0
							0
							15,402,506

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
a. Property Tax Computer System (Restricted/Biennial/OTC)						
2,750,000	0	0	0	2,750,000	0	0
b. Agriculture/Forest Land Reappraisal Program (OTC)						
147,502	0	0	0	147,502	0	0
Total						
38,738,806	621,921	298,421	2,115,429	41,774,577	632,330	301,502

Any funds remaining, up to \$1,400,000, from the appropriation authorized in section 12(1), Chapter 597, Laws of 2003, are reappropriated to the department for the 2007 biennium for the stated purpose.

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated from the liquor enterprise fund (06005) to the department in amounts not to exceed \$78,766,985 in fiscal year 2006 and \$83,497,337 in fiscal year 2007.

In the event that the department is unable to meet statutory service levels because of the increase in demand for liquor products, the department may hire additional temporary employees or pay overtime, whichever is determined to be the more cost-effective, to maintain required service levels to stores. In fiscal year 2006 and in fiscal year 2007, the department is appropriated not more than \$40,000 each year for additional costs from the liquor enterprise fund (06005) to meet the service level requirements.

In the liquor division, upon a termination that requires a payout of accrued leave balances, liquor division proprietary funds are appropriated from the liquor enterprise fund (06005) to the department in the amount equal to the payout of the accrued leave balances, not to exceed \$30,000 for each of fiscal years 2006 and 2007.

Funds are not appropriated or otherwise made available to the department to support continuation of individual income tax debt collection contracts entered into before July 1, 2005.

Funding in Tax Compliance Staff may be used only for personal services and operating costs for additional tax audit staff, including support and legal staff.

If Senate Bill No. 48 is not passed and approved, Property Assessment Division is reduced by \$18,720 in general fund money in fiscal year 2006 and by \$18,720 in general fund money in fiscal year 2007.

DEPARTMENT OF ADMINISTRATION (6101)

1. Administrative Financial Services Division (03)						
1,216,870	2,883	64,156	44,997	0	1,328,906	1,217,039
					3,498	64,206
					44,934	0
						1,329,677

	General Fund	State Special Revenue	Fiscal 2006			Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Fiscal 2007		Other	Total
			State Special Revenue	Proprietary	Proprietary						Proprietary	Proprietary		
a. Legislative Audit (Restricted/Biennial)														
18,089	615	0	0	0	0	0	18,704	0	0	0	0	0	0	0
2. Architecture and Engineering Program (04)														
0	1,252,414	0	0	0	0	0	1,252,414	0	1,251,602	0	0	0	0	1,251,602
a. Legislative Audit (Restricted/Biennial)														
0	1,731	0	0	0	0	0	1,731	0	0	0	0	0	0	0
3. General Services Program (06)														
607,003	0	0	0	0	0	500,000	1,107,003	606,324	0	0	0	500,000	0	1,106,324
4. Information Technology Services Division (07)														
450,010	1,050,000	767,902	0	0	0	0	2,267,912	449,651	1,050,000	768,793	0	0	0	2,268,444
a. Legislative Audit (Restricted/Biennial)														
608	0	1,515	0	0	0	0	2,123	0	0	0	0	0	0	0
b. Montana Spatial Data Infrastructure (OTO)														
0	0	707,000	0	0	0	0	707,000	0	0	707,000	0	0	0	707,000
c. Emergency Telecommunication Infrastructure (Restricted/Biennial/OTO)														
3,500,000	0	0	0	0	0	0	3,500,000	0	0	0	0	0	0	0
5. Banking and Financial Division (14)														
0	2,701,813	0	0	0	0	0	2,701,813	0	2,790,093	0	0	0	0	2,790,093
a. Legislative Audit (Restricted/Biennial)														
0	3,173	0	0	0	0	0	3,173	0	0	0	0	0	0	0
b. Mortgage Broker Act — SB 274														
0	54,706	0	0	0	0	0	54,706	0	59,784	0	0	0	0	59,784
6. Montana State Lottery (15)														
0	0	0	0	7,199,873	0	0	7,199,873	0	0	0	7,201,651	0	0	7,201,651
a. Legislative Audit (Restricted/Biennial)														
0	0	0	0	99,913	0	0	99,913	0	0	0	0	0	0	0
b. Administrative Server (OTO)														
0	0	0	0	7,000	0	0	7,000	0	0	0	0	0	0	0

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	
c. Vendor Fees (Restricted)	0	0	0	150,000	0	150,000	0
7. State Personnel Division (23)							
1,235,347	32,241	0	0	0	0	1,267,588	32,241
8. State Tax Appeal Board (37)							
331,134	0	0	0	0	0	331,134	0
Total	7,359,061	5,099,576	1,540,573	7,501,783	500,000	22,000,993	3,839,935

If House Bill No. 425 is not passed and approved, then Administrative Financial Services Division is increased by \$785 in general fund money and \$496,118 in state special revenue in fiscal year 2006 and by \$1,400 in general fund money and \$495,843 in state special revenue in fiscal year 2007, which reflects the current appropriations for administration and enforcement functions relating to unfair trade practices and consumer protection and telemarketing laws in the consumer protection office in the department. The legislative fiscal division and the office of budget and program planning are authorized to transfer all fiscal year 2004 expenditures and fiscal year 2005 appropriations from the department of administration to the department of justice for the purpose of display in the legislative fiscal division 2007 biennium fiscal report.

If House Bill No. 102 is not passed and approved, there is appropriated from the general fund to the department for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed \$350,000 in fiscal year 2006 and \$350,000 in fiscal year 2007.

There is appropriated from the general fund to the department the amount required to be refunded to the federal government for its participation in the workers' compensation old fund transfer to the general fund, not to exceed \$300,000 in fiscal year 2006. Funding is contingent upon the department validating a need for the refund following negotiations with the federal government.

Any funds remaining, up to \$2,100,000, from the appropriation authorized in section 11(2), Chapter 597, Laws of 2003, are reappropriated to the department for the 2007 biennium for the stated purpose. If House Bill No. 745 is passed and approved in a form that includes an appropriation of \$2,100,000 to finish the contractor payments on IRIS phase one, then this appropriation is void.

Mortgage Broker Act is contingent upon passage and approval of Senate Bill No. 274.

Funding for Vendor Fees is restricted to payment of fees to the lottery online gaming system vendor under valid contract obligations.

APPELLATE DEFENDER COMMISSION (6102)

	Fiscal 2006				Fiscal 2007				Total			
	General Fund	State Special Revenue	Proprietary	Other	General Fund	State Special Revenue	Proprietary	Other				
TOTAL SECTION A	99,090,129	259,135,246	323,139,478	9,617,212	500,000	691,482,065	97,375,585	265,545,769	320,272,769	9,610,759	500,000	693,304,882

[illegible]

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	51,344	0	42,009	0	42,009	0	93,353
b. Foster Care — Transportation Allowance (Restricted)	111,101	0	90,900	0	90,900	0	202,001
c. Foster Care — Diaper Allowance (Restricted)	59,294	0	48,514	0	48,514	0	107,808
d. Foster Care — Clothing Allowance (Restricted)	131,200	0	82,800	0	82,800	0	214,000
e. Family Foster Care Rate Increase (Restricted)	192,000	0	82,286	0	82,286	0	274,286
f. Foster Care Group Home Rate Increase (Restricted)	102,000	0	43,714	0	43,714	0	145,714
3. Director's Office (04)	1,328,489	241,224	2,624,543	0	4,194,256	17,142,060	18,214,843
a. Waiver of Deeming	0	0	0	0	0	0	100,000
b. Tribal Programs (Restricted/Biennial)	52,000	0	52,000	0	0	0	0
4. Child Support Enforcement Division (05)	666,138	1,900,929	6,516,638	0	9,083,705	6,510,299	9,068,875
a. Child Support Enforcement (Biennial)	1,263,678	0	0	0	1,263,678	0	0
5. Fiscal Services Division (06)	2,107,434	349,940	3,248,729	0	5,706,103	3,247,495	5,703,889
a. Legislative Audit (Restricted/Biennial)	137,988	6,272	169,348	0	313,608	0	0
6. Public Health and Safety Division (07)	2,642,811	10,388,493	43,149,520	0	56,180,824	43,143,957	55,546,600
a. Local Inspection Funds (OTO)							

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total
0	100,000	0	0	0	0	0	100,000
b. Federally Funded FTE							
0	0	120,975	0	0	0	0	120,975
c. Tribal Tobacco Prevention Contracts (Restricted/Biennial)							
0	720,000	0	0	0	0	0	720,000
d. Tribal Peer Counseling (Restricted/Biennial)							
60,000	0	0	0	0	0	0	60,000
7. Quality Assurance Division (08)							
2,069,248	271,467	5,546,567	0	0	0	0	7,887,282
a. Medicaid Payment Error Rate (Restricted/OTO)							
134,468	0	134,468	0	0	0	0	268,936
8. Operations and Technology Division (09)							
8,870,818	1,105,605	17,214,502	0	0	0	0	27,190,925
a. OTD — Implement Provisions of HB 667							
0	101,000	149,000	0	0	0	0	250,000
b. OTD — Implement Change in Medicaid Asset Test for Children							
13,821	0	13,821	0	0	0	0	27,642
9. Disability Services Division (10)							
43,552,430	1,071,546	79,615,081	0	0	0	0	124,239,057
a. Montana Telecommunications Access Program (Restricted)							
0	244,448	0	0	0	0	0	244,448
b. Developmental Disabilities Training (Restricted/Biennial/OTO)							
120,600	0	79,400	0	0	0	0	200,000
c. Developmental Disabilities Crisis (Restricted/Biennial/OTO)							
120,600	0	79,400	0	0	0	0	200,000
d. Developmental Disabilities Startup (Restricted/Biennial/OTO)							
500,000	0	0	0	0	0	0	500,000
e. Developmental Disabilities Waiting List Reduction (Restricted)							

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	326,138	0	798,863	0	1,125,001	335,700	0
f. Montana Development Center Bed Tax (Restricted)							0
	860,168	0	0	0	860,168	858,263	0
g. Extended Employment Follow Along (Restricted)							0
	140,000	0	0	0	140,000	140,000	0
h. Extended Employment Sheltered (Restricted)							0
	70,000	0	0	0	70,000	70,000	0
i. Independent Living (Restricted)							0
	100,000	0	0	0	100,000	100,000	0
j. Computer Tech Support to Assist Blind (Restricted)							0
	65,000	0	0	0	65,000	65,000	0
k. Part C Early Intervention (Restricted)							0
	90,000	0	0	0	90,000	90,000	0
l. Direct-Care Worker Salary Increase From 25th to 35th Percentile (Restricted)							0
	475,000	475,000	1,219,445	0	2,169,445	950,000	1,190,604
10. Health Resources Division (11)							0
96,577,980	11,892,070	319,083,736	0	0	427,553,786	104,889,808	13,764,183
a. Hospital Bed Tax (Restricted)							0
	0	11,504,525	27,560,392	0	39,064,917	0	13,171,367
b. Physician Rate Increase (Restricted/Biennial)							0
	400,000	1,200,000	3,862,615	0	5,462,615	0	0
c. Raise Asset Limit for Medicaid Eligibility for Children (Restricted)							0
	0	0	0	0	0	5,847,754	0
d. Children's Mental Health Direct-Care Worker Wage Increase (Restricted/Biennial)							0
	0	875,000	2,112,368	0	2,987,368	0	0
e. Additional Medicaid Management Staff (Restricted)							0
	117,934	0	117,935	0	235,869	117,590	0
f. Medicaid (Biennial)							0

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total
g. Nonhospital Provider Rate Increase, Dental Access	0	601,571	1,452,473	0	0	2,054,044	0
858,952	858,952	5,410,263	0	0	0	7,128,167	0
h. Cardiac and Pulmonary Rehabilitation	0	56,465	136,314	0	0	192,779	0
i. Flexible Funds for SED Waiver	0	0	0	0	0	0	0
j. Children's Special Health Care Clinic	0	25,000	0	0	0	25,000	0
k. EPSDT and Rate Increases for Hospitals, Critical Access Hospitals, and Ambulatory Surgical Centers	0	272,717	658,376	0	0	931,093	0
l. Prescription Drug Program — SB 324 (Restricted)	0	6,000,000	0	0	0	6,000,000	0
m. Startup Funds for Prescription Drug Program (Biennial)	0	1,000,000	0	0	0	1,000,000	0
n. HRD — Implement Provisions of HB 667	0	12,830	12,830	0	0	25,660	0
11. Senior and Long-Term Care Division (22)	46,911,777	13,370,487	130,912,385	0	0	191,194,649	47,263,403
a. County Nursing Home Intergovernmental Transfer (Restricted)	0	4,992,719	14,735,350	0	0	19,728,069	0
b. Montana Veterans' Home Contingency Fund (Restricted)	0	250,000	0	0	0	250,000	0
c. Meals on Wheels (Restricted/OTO)	567,000	0	0	0	0	567,000	0
d. In-Home Caregiver (Restricted/Biennial/OTO)	600,000	0	0	0	0	600,000	0
e. Direct-Care Worker Wage Increase (Restricted/Biennial)	0	0	0	0	0	0	0

	Fiscal 2006					Fiscal 2007						
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1,000,000	3,000,000	9,656,538	0	0	0	13,656,538	0	0	0	0	0	0
f. Study of Veterans' Long-Term Health Care Needs (Restricted/Biennial/OTO)	0	50,000	0	0	0	50,000	0	0	0	0	0	0
g. Provider Rate Increases — Nursing Home and Community Services	991,877	991,878	4,789,051	0	0	6,772,806	0	2,018,663	4,728,205	0	0	6,746,868
h. Community Services HCBS Expansion	0	57,848	139,908	0	0	197,756	0	118,184	279,816	0	0	398,000
12. Addictive and Mental Disorders Division (33)	41,867,075	5,300,526	35,030,998	0	0	82,198,599	42,533,984	5,416,927	35,465,223	0	0	83,416,134
a. PACT Services (Restricted)	745,152	0	1,731,678	0	0	2,476,830	861,684	0	1,845,260	0	0	2,706,944
b. Nursing Care Center Bed Tax Payment (Restricted)	180,127	0	0	0	0	180,127	211,915	0	0	0	0	211,915
c. Mental Health Services Plan (Restricted/Biennial)	0	6,500,000	0	0	0	6,500,000	0	0	0	0	0	0
d. Expand Intensive Community-Based Rehabilitation	0	84,191	203,247	0	0	287,438	0	172,003	402,872	0	0	574,875
e. Develop Home and Community-Based Waiver	0	0	0	0	0	0	0	631,601	1,479,364	0	0	2,110,965

[Appropriations for Human and Community Services Division, Child and Family Services Division, Director's Office, Child Support Enforcement Division, Fiscal Services Division, Public Health and Safety Division, Quality Assurance Division, Operations and Technology Division, Disability Services Division, Health Resources Division, Senior and Long-Term Care Division, and Addictive and Mental Disorders Division include over \$70 million annually to support contracts with local, nonstate public and private entities that provide either direct, distinct services and benefits directly to individuals or broad direct and indirect public benefits to the citizens of Montana. These appropriations have been made as requested by the department in either the operating category of expenditure or the grants category of expenditure. The department is directed to work with the department of administration, the legislative branch, and the office of budget and program planning to help establish accounting guidance that allows the executive branch to more consistently and uniformly account for appropriations that provide direct and indirect benefits to persons. The department and department of administration shall report to the legislative finance committee and members of the 2005

General Fund	State Special Revenue	Fiscal 2006		Total	Other	Fiscal 2007			Total
		General Fund	State Special Revenue			Proprietary	Other	Federal Special Revenue	

legislative joint appropriations subcommittee on health and human services by September 1, 2005, and every 6 months thereafter until completion of the project.]

Human and Community Services Division includes \$50,000 in state special revenue in fiscal year 2006 and \$50,000 in state special revenue in fiscal year 2007 that are contingent upon passage and approval of House Bill No. 749 and Senate Bill No. 82. If House Bill No. 749 and Senate Bill No. 82 are not passed and approved, general fund money in Human and Community Services Division is increased by \$50,000 in fiscal year 2006 and by \$50,000 in fiscal year 2007.

Human and Community Services Division includes \$749,002 in federal funds in fiscal year 2006 and \$749,002 in federal funds in fiscal year 2007 that are contingent upon passage and approval of House Bill No. 529. If House Bill No. 529 is not passed and approved, funding for Human and Community Services Division is reduced by \$749,002 in federal funds in fiscal year 2006 and \$749,002 in federal funds in fiscal year 2007.

Human and Community Services Division includes \$404,148 in federal funds in fiscal year 2006 and \$404,148 in federal funds in fiscal year 2007 that are contingent upon passage and approval of Senate Bill No. 29. If Senate Bill No. 29 is not passed and approved, funding for Human and Community Services Division is reduced by \$404,148 in federal funds in fiscal year 2006 and \$404,148 in federal funds in fiscal year 2007.

Federal temporary assistance for needy families (TANF) funds and general fund money supporting TANF maintenance of effort may not be expended for abstinence education.

TANF funds and general fund money supporting TANF maintenance of effort may be expended for the following purposes only if beginning on October 1, 2005, the cash assistance benefit level is at or above 33% of the 2005 federal poverty level index and funding for the work readiness component (WoRC) program is maintained at or above fiscal year 2005 levels:

- (1) achievement or incentive awards;
- (2) accelerated employment services or diversionary projects; or
- (3) after school programs.

This restriction has been adopted by the legislature in an effort to make funds available to support an increase in the TANF cash assistance benefit level. It is the priority of the legislature to fund increases in the TANF cash assistance benefit level rather than funding items such as those listed above.

[The department shall report at each meeting of the children, families, health, and human services interim committee:

- (1) the actual amount expended and items supported by TANF block grant money in the current biennium;
- (2) the actual amount expended and items supported by TANF maintenance of effort funds in the current biennium;

Fiscal 2006			Fiscal 2007		
General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Proprietary	Other	Total	Proprietary	Other	Total

(4) the balance of federal TANF block grant funds that remain unexpended;

(4) the monthly TANF cash assistance caseload, costs of cash assistance, and the cash assistance benefit level;

(5) the projected annual amount to be transferred to child care and Title XX; and

(6) the projected TANF block grant ending fund balance for the current and next state fiscal years;]

Funding for Energy Ombudsman Services may be used only to fund case management-type staff at human resource development councils whose purpose is to assist low-income customers seeking emergency energy assistance. [The department shall provide an annual report to the members of the 2005 legislative joint appropriations subcommittee on health and human services on the successes, failures, and impact that this effort has on assisting low-income families to move toward self-sufficiency in meeting their home heating needs;]

Funding for Low-Income Energy Assistance includes \$500,000 in general fund money for each year of the biennium to support increases in low-income energy assistance programs.

Funding for Low-Income Energy Assistance includes general fund money supporting energy assistance and weatherization. These funds may be used to support the state low-income energy assistance program, the state weatherization program, or tribal energy assistance programs.

Funding in TANF Cash Assistance Increase Benefit Level and TANF Reduce CC Transfer, Fund Cash Assistance may be used only to increase the monthly cash assistance benefit provided to TANF cash assistance recipients, and it is estimated that each \$2.4 million provided for TANF Cash Assistance Increase Benefit Level and TANF Reduce CC Transfer, Fund Cash Assistance is adequate to increase the TANF cash assistance benefit level, for the average family of three on the current caseload, by approximately \$50 a month.

Funding in Adult Basic Education supports provision of adult basic education services designed to meet the specific needs of TANF participants. Priority for funding must be given to the geographic areas that have the highest percentage of their population enrolled in the TANF program.

Funding in HCSD — Implement Provisions of HB 667, OTD — Implement Provisions of HB 667, and HRD — Implement Provisions of HB 667 is contingent upon passage and approval of House Bill No. 667. Funding in HCSD — Implement Provisions of HB 667 includes funding for 1 FTE for eligibility determination. Funding in HRD — Implement Provisions of HB 667 includes funding for 1 FTE to administer the medicaid 1115 waiver for a premium incentive or premium assistance program associated with House Bill No. 667.

Funding in HCSD — Implement Change in Medicaid Asset Test for Children, OTD — Implement Change in Medicaid Asset Test for Children, and Raise Asset Limit for Medicaid Eligibility for Children is contingent upon passage and approval of House Bill No. 552. Funding in HCSD — Implement Change in Medicaid Asset Test for Children includes funding for 3 FTE.

Fiscal 2006			Fiscal 2007		
General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Proprietary			Proprietary		
Other			Other		
Total			Total		

(4) status and timing of statewide implementation of the published rate schedule and Montana resource allocation protocol and

(5) status of achieving compliance with centers for medicare and medicaid findings and regulations and whether or not imposition of any penalties is occurring;]

Disability Services Division includes \$10,000 in state special revenue and \$17,038 in federal funds in fiscal year 2006 and \$10,000 in state special revenue and \$16,443 in federal funds in fiscal year 2007 that are contingent upon passage and approval of House Bill No. 513. If House Bill No. 513 is not passed and approved, funding in Disability Services Division is reduced by \$10,000 in state special revenue and \$17,038 in federal funds in fiscal year 2006 and by \$10,000 in state special revenue and \$16,443 in federal funds in fiscal year 2007.

Disability Services Division includes \$16,000 in state special revenue in fiscal year 2006 and \$16,000 in state special revenue in fiscal year 2007 that are contingent upon passage and approval of Senate Bill No. 433. If Senate Bill No. 433 is not passed and approved, funding in Disability Services Division is reduced by \$16,000 in state special revenue in fiscal year 2006 and \$16,000 in state special revenue in fiscal year 2007.

Rate increases and services funded in Direct-Care Worker Salary Increase From 25th to 35th Percentile, Physician Rate Increase, Nonhospital Provider Rate Increase, Dental Access, Direct-Care Worker Wage Increase, and Provider Rate Increases — Nursing Home and Community Services should be established and implemented at levels that will fully expend the appropriations beginning no later than July 15, 2005, and ending June 30, 2007. Rate increases should be structured so that funding in Direct-Care Worker Salary Increase From 25th to 35th Percentile, Physician Rate Increase, Nonhospital Provider Rate Increase, Dental Access, Direct-Care Worker Wage Increase, and Provider Rate Increases — Nursing Home and Community Services is expended incrementally throughout the 2007 biennium.

Funding for the Montana Telecommunications Access Program may be expended only to support the activities of the Montana telecommunications access program.

Funding for Developmental Disabilities Training may be expended only to support developmental disabilities training for staff and providers as required in the settlement agreement of the Travis D. litigation.

Funding for Developmental Disabilities Crisis may be expended only to support developmental disabilities consumers who experience crisis and as required in the settlement agreement of the Travis D. litigation.

Funding for Developmental Disabilities Startup may be expended only to support startup costs for service expansion as required by the settlement agreement of the Travis D. litigation.

Funding for Developmental Disabilities Waiting List Reduction may be used only to support services provided to individuals who have been on the developmental disabilities waiting list and are entering developmental disabilities services.

Funding for Montana Development Center Bed Tax may be used only to support the bed tax charged to the Montana developmental center.

The appropriation for the Senior and Long-Term Care Division includes funds to address the difficulty in recruitment and retention of direct care staff at the Montana veterans' home. The legislature directs the department to aggressively pursue options to resolve the problem of recruitment and retention of staff for the

The appropriation for the Addictive and Mental Disorders Division includes funding for 3 FTE in fiscal year 2006 and 5 FTE in fiscal year 2007. Funding for 1 FTE in fiscal year 2006 and 2 FTE in fiscal year 2007 is added to ensure that the addictive and mental disorders division has adequate resources to plan for and implement development of community mental health crisis services. [The department shall prepare a report for the legislative finance committee and include the hire date for all FTE, including those who will support crisis services planning and implementation; the plan adopted by the division for development and implementation of community crisis services; and the progress made toward implementation of the plan. The report must also include information describing the other duties performed by the FTE and provide outcome measures to facilitate legislative evaluation of the effectiveness of the regional FTE. The department shall report to the legislative finance committee by September 1, 2005, and every 6 months thereafter.]

			Fiscal 2006			Fiscal 2007			Total	Other	Total
General Fund	State Special Revenue		Federal Special Revenue	Proprietary	Other	General Fund	State Special Revenue	Federal Special Revenue			

The appropriation for the Addictive and Mental Disorders Division includes funding for a rate increase for psychiatric services, [The department shall report to the legislative finance committee by September 1, 2005, and every 6 months thereafter on the amount of rate increase given, the number of services provided, and assessment of whether the rate increase facilitated access to psychiatrists for low-income persons with a serious and disabling mental illness.]

Funds in PACT Services may be used only for the program for assertive community treatment (PACT). [The department shall report to the legislative finance committee by September 1, 2005, and every 6 months thereafter on the number of PACT teams, number of persons served in PACT, and PACT outcome measures tracked by the department.]

Funding in Nursing Care Center Bed Tax Payment may be used only to pay the nursing home utilization fees as provided for in 15-60-102. If House Bill No. 749 is not passed and approved, funding in Nursing Care Center Bed Tax Payment must be reduced by \$44,712 in general fund money in fiscal year 2006 and by \$76,500 in general fund money in fiscal year 2007.

In fiscal year 2006, funds in Mental Health Services Plan may be used only for the mental health services program authorized in 53-21-702(2) and for state medicaid matching funds to implement Senate Bill No. 110.

308,876,120	88,762,684	940,955,676	0	0	1,338,594,480	309,143,662	87,959,609	987,758,734	0	0	1,384,862,005
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TOTAL SECTION B

Ch. 607

MONTANA SESSION LAWS 2005

2908

	Fiscal 2006			Fiscal 2007			Total			
	General Fund	State Special Revenue	Federal Special Revenue	Other	Total	General Fund		State Special Revenue	Federal Special Revenue	Proprietary
C. NATURAL RESOURCES AND COMMERCE										
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)										
1. Administration and Finance Division (01)										
0	6,138,467	1,835,623	0	0	7,974,090	0	6,192,633	1,813,983	0	8,006,616
a. Legislative Audit (Restricted/Biennial)										
0	77,959	13,757	0	0	91,716	0	0	0	0	0
2. Field Services Division (02)										
0	5,948,352	773,950	0	0	6,722,302	0	4,667,020	453,561	0	5,120,581
a. Net Client Hunter Use (Restricted/Biennial)										
0	8,770	0	0	0	8,770	0	8,770	0	0	8,770
b. Public Wildlife Interface (Biennial)										
0	32,500	0	0	0	32,500	0	32,500	0	0	32,500
3. Fisheries Division (03)										
0	4,330,744	6,836,770	0	0	11,167,514	0	4,326,823	6,826,427	0	11,153,250
a. Legislative Contract Authority (OTO)										
0	0	2,250,000	0	0	2,250,000	0	0	2,250,000	0	2,250,000
4. Law Enforcement Division (04)										
0	6,719,053	252,253	0	0	6,971,306	0	6,598,549	222,938	0	6,821,487
a. Seasonal Water Safety (Restricted)										
0	0	71,832	0	0	71,832	0	0	71,714	0	71,714
b. Warden Trainee Program (Restricted)										
0	34,436	11,479	0	0	45,915	0	34,436	11,479	0	45,915
c. Legislative Contract Authority (OTO)										
0	0	20,000	0	0	20,000	0	0	20,000	0	20,000
d. Bison Hunt (Biennial)										
0	5,000	0	0	0	5,000	0	5,000	0	0	5,000
5. Wildlife Division (05)										

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
	0	4,236,476	3,834,388	0	4,236,114	3,834,585	8,070,699
a. Enhanced Wildlife Surveys (Restricted/OTO)	0	125,000	125,000	0	125,000	125,000	250,000
b. Equipment (OTO)	0	47,000	0	0	0	0	0
c. Nongame Funds (Restricted)	0	43,500	0	0	43,500	0	43,500
d. Legislative Contract Authority (OTO)	0	0	400,000	0	0	400,000	400,000
e. Black Bear Harvest (OTO)	0	17,263	51,787	0	17,263	51,787	69,050
f. Mountain Lion Research (OTO)	0	40,000	120,540	0	0	0	0
6. Parks Division (06)	0	7,020,521	397,169	0	6,686,526	397,279	7,083,805
a. Snowmobile Groomer (Biennial)	0	178,500	0	0	178,500	0	178,500
b. Legislative Contract Authority	0	0	35,000	0	0	35,000	35,000
7. Conservation Education Division (08)	0	2,053,800	718,621	0	1,939,446	718,621	2,658,067
a. Shooting Grants (Biennial)	0	83,118	0	0	83,118	0	83,118
8. Department Management (09)	0	3,052,681	1,036,331	0	3,060,902	1,011,062	4,071,964
a. State Wildlife Grants (Biennial/OTO)	0	200,000	2,800,000	0	0	0	0

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Total	0	40,393,140	21,584,500	0	0	61,977,640

If the department receives additional federal special revenue for services comparable to those with general license revenue or is required to adjust personal services expenditures between state and federal accounts, the approving authority may adjust the state special revenue appropriation and the federal appropriation by like amounts.

At the beginning of fiscal year 2006, \$177,700 from the general license account is transferred to the water adjudication fund as payment of water adjudication fees related to water rights held by the department.

[The department shall present a written quarterly report to the legislative fiscal division detailing its progression with the automated licensing system transition plan and the related costs for the current fiscal year. In addition, it shall present this information to the legislative finance committee at the October 2005 and June 2006 meetings.]

If House Bill No. 707 is not passed and approved, Administration and Finance Division is decreased by \$91,100 in state special revenue in both fiscal year 2006 and 2007.

If Senate Bill No. 77 is passed and approved, Field Services Division is increased by 4.3 FTE and \$2,081,947 in state special revenue in fiscal year 2006 and by 10.63 FTE and \$4,364,950 in state special revenue in fiscal year 2007.

If House Bill No. 235 is not passed and approved, Field Services Division is increased by \$13,683 in state special revenue in fiscal year 2006 and decreased by \$668,631 in state special revenue in fiscal year 2007 and Law Enforcement Division is reduced by \$57,601 in state special revenue in fiscal year 2007.

If Senate Bill No. 77 is passed and approved, Law Enforcement Division is increased by 2.5 FTE and \$145,903 in state special revenue in fiscal year 2006 and by 5 FTE and \$291,806 in state special revenue in fiscal year 2007.

If House Bill No. 235 is not passed and approved or is passed and approved with an appropriation, Law Enforcement Division is reduced by 2 FTE and \$114,000 of state special revenue in fiscal year 2006 and reduced by 2 FTE and \$104,500 of state special revenue in fiscal year 2007.

If Senate Bill No. 77 is not passed and approved, Field Services Division is decreased by 2 FTE and \$605,478 in fiscal 2006 and \$605,627 in fiscal 2007 in state special revenue.

During the 2007 biennium, if the department obtains federal funding for the operations of the Fort Peck fish hatchery, it must be used to replace state special revenue approved to fund personal services and operational costs of the hatchery.

If House Bill No. 119 is passed and approved, Law Enforcement Division is increased by \$20,000 in state special revenue and \$20,000 in federal special revenue in fiscal year 2007.

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
	955,900	10,824,800	5,076,424	0	16,857,124	0
a. Major Facility Siting Act and Hard Rock (Restricted/Biennial)	0	7,942,000	4,000,000	0	11,942,000	0
b. Air Quality Research (Restricted/OTO)	0	0	50,000	0	50,000	0
c. PCD Database (Restricted/Biennial/OTO)	0	75,000	0	0	75,000	0
d. Hazardous Waste/Brownfields (Biennial)	0	0	87,500	0	87,500	0
e. Subdivision Review (Restricted/Biennial/OTO)	0	100,000	0	0	100,000	0
f. Termination Pay (OTO)	4,171	11,002	0	0	15,173	0
g. CAFO Inventory (Restricted/Biennial/OTO)	0	25,000	0	0	25,000	0
6. Petroleum Tank Release Compensation Board (90)	0	593,798	0	0	593,798	0
Total	4,242,366	29,796,124	30,611,899	0	64,650,389	26,495,235

If Senate Bill No. 320 is passed and approved in a form that does not require a programmatic EIS to be completed, Confined Animal Feeding Operations is void.

The department is authorized to decrease federal special revenue in the water pollution control and/or drinking water revolving loan programs and to increase state special revenue by a like amount within the special administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.

The department is authorized to expend up to 25% of subrogated petroleum tank release compensation funds to pay contract expenses associated with release subrogation activities. Expenditure of these funds is limited to the fee collected.

If Senate Bill No. 489 is not passed and approved, Orphan Share Feasibility Study is void.

	Fiscal 2006			Total	Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue		General Fund	State Special Revenue	Federal Special Revenue	
If Senate Bill No. 143 is passed and approved, funding for the Remediation Division is increased by \$209,595 in state special revenue and funding for the Permitting and Compliance Division is increased by \$390,405 in state special revenue each year of the 2007 biennium.								
If House Bill No. 60 is not passed and approved, Permitting and Compliance Division is decreased by \$131,397 in general fund money in fiscal year 2006 and by \$123,762 in general fund money in fiscal year 2007.								
If House Bill No. 361 is not passed and approved, funding for the Permitting and Compliance Division is decreased by \$169,101 in state special revenue and by \$11,564 in federal special revenue in fiscal year 2006 and by \$159,563 in state special revenue and by \$11,404 in federal special revenue in fiscal year 2007.								
If Senate Bill No. 320 is not passed and approved with an increase in application and renewal fees, Permitting and Compliance Division is reduced by \$43,800 in state special revenue in fiscal year 2006 and by \$57,900 in state special revenue in fiscal year 2007.								
DEPARTMENT OF LIVESTOCK (5603)								
1. Centralized Services Program (01)								
0	1,546,364		65,031	1,611,395	0	1,546,386	65,031	1,611,417
a. Legislative Audit (Restricted/Biennial)								
0	29,568	0	0	29,568	0	0	0	0
2. Diagnostic Laboratory Program (03)								
91,911	1,212,796	0	0	1,304,707	91,911	1,222,277	0	1,314,188
3. Animal Health Division (04)								
0	476,045	897,503	0	1,373,548	0	474,600	897,503	1,372,103
a. Vehicle Replacement (OTO)								
0	0	0	0	0	0	26,000	0	26,000
4. Milk and Egg Program (05)								
0	245,276	41,501	0	286,777	0	271,671	41,501	313,172
5. Brands Enforcement Division (06)								
0	2,584,340	0	0	2,584,340	0	2,581,576	0	2,581,576
6. Meat and Poultry Inspection Program (10)								
467,377	6,475	468,064	0	941,916	465,736	6,475	465,736	937,947
a. FAIM Computers (OTO)								

	Fiscal 2006				Fiscal 2007							
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
11,080	0	11,080	0	0	0	22,160	9,695	0	9,695	0	0	19,390
b. Meat Inspector (OTO)												
25,000	0	0	0	0	0	25,000	25,000	0	0	0	0	25,000
Total												
595,368	6,100,864	1,483,179	0	0	0	8,179,411	592,342	6,128,985	1,479,466	0	0	8,200,793
The appropriation for Meat Inspector may be used only if approved by the director of the office of budget and program planning for additional FTE because of workload increases.												
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)												
1. Centralized Services (21)												
1,835,431	467,854	80,632	0	0	0	2,383,917	1,843,628	467,770	83,256	0	0	2,394,654
a. Legislative Audit (Restricted/Biennial)												
106,508	0	0	0	0	0	106,508	0	0	0	0	0	0
b. Phone System (Biennial/OTO)												
7,500	7,500	0	0	0	0	15,000	7,500	7,500	0	0	0	15,000
2. Oil and Gas Conservation Division (22)												
0	1,770,568	0	0	0	0	1,770,568	0	1,784,990	0	0	0	1,784,990
a. Education and Outreach (Biennial/OTO)												
0	62,500	0	0	0	0	62,500	0	62,500	0	0	0	62,500
b. Exposition (Biennial)												
0	7,500	0	0	0	0	7,500	0	7,500	0	0	0	7,500
c. Public Access Data (OTO)												
0	209,129	0	0	0	0	209,129	0	209,099	0	0	0	209,099
3. Conservation and Resource Development Division (23)												
1,271,964	2,663,603	267,263	0	0	0	4,202,830	1,272,682	2,664,515	276,413	0	0	4,213,610
a. Grazing Districts (Biennial)												
0	3,500	0	0	0	0	3,500	0	3,500	0	0	0	3,500

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total
b. CD Financial Assistance (Biennial)	0	47,168	0	0	0	47,168	48,263
c. Irrigation Development (OTO)	0	150,000	0	0	0	150,000	150,000
d. Missouri River Conservation District Council (OTO)	0	80,000	0	0	0	80,000	80,000
e. Conservation District Assistance (OTO)	0	150,000	0	0	0	150,000	0
4. Water Resources Division (24)	6,187,256	1,618,604	92,773	0	0	7,898,633	7,910,155
a. Dam Rehabilitation (Restricted/Biennial/OTO)	0	165,000	0	0	0	165,000	165,000
b. Preconstruction (Biennial/OTO)	0	206,800	0	0	0	206,800	206,800
c. Well Contractors (Restricted/OTO)	0	16,800	0	0	0	16,800	16,800
d. Optical Imaging (OTO)	0	108,551	0	0	0	108,551	89,556
e. Water Adjudication Database (Restricted/OTO)	400,000	0	0	0	0	400,000	0
f. Expedite Water Adjudication (Restricted/Biennial/OTO)	600,000	0	0	0	0	600,000	1,000,000
g. Broadwater Bridge (Restricted/Biennial/OTO)	0	325,000	0	0	0	325,000	325,000
h. Fisheries Mitigation (Biennial)	0	43,000	0	0	0	43,000	43,000
i. Water Adjudication (Biennial)	0	1,991,600	0	0	0	1,991,600	1,991,600

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
j. Clark Fork River Task Force (Biennial)	0	12,500	0	0	12,500	0
5. Reserved Water Rights Compact Commission (25)	690,337	0	0	0	690,337	0
a. Contracted Services (Restricted/Biennial/OTO)	97,500	0	0	0	97,500	0
6. Forestry and Trust Lands (35)	7,777,587	12,759,904	1,547,294	0	12,793,053	1,549,133
a. Trust Land Equipment (OTO)	0	16,000	0	0	16,000	0
b. Build UH-1 (OTO)	200,000	0	0	0	200,000	0
Total	19,174,083	22,883,081	1,987,962	0	44,045,126	2,001,908

The department is authorized to decrease state special revenue in the underground injection control program and increase federal special revenue by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue is to be spent before state special revenue.

The department is appropriated up to \$600,000 for the 2007 biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as required by 85-1-618.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving loan programs and increase state special revenue by a like amount within the special administration account when:

- (1) the federal capitalization funds have been expended; or
- (2) federal funds and bond proceeds are used for other program purposes.

During the 2007 biennium, up to \$500,000 of funds in or to be deposited in the coal bed methane account is appropriated to the department for use by conservation districts in the case of an emergency, as defined in 76-15-903, for private landowners or water right holders who qualify for compensation and for conservation district services provided under the program.

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
2. Agricultural Sciences Division (30)							
101,341 5,087,051 1,012,212	0	0	6,200,604	101,341	5,080,187	996,779	6,178,307
a. Noxious Weed Control (Biennial)	0	0	3,580,000	0	0	0	0
b. EPA Homeland Security Grant (Restricted/OTO)	0	0	294,490	0	0	294,438	294,438
c. Ground Water Base Adjustment (Restricted/OTO)	0	23,277	0	0	23,277	0	23,277
d. Analytical Lab Cost Adjustment (OTO)	230,300	0	0	108,034	0	0	108,034
3. Agricultural Development Division (50)							
334,278 3,738,435 113,401	305,276	0	4,491,390	333,981	3,735,240	113,401	4,491,785
Total	844,207	9,457,609	5,090,103	683,183	9,432,116	1,494,618	11,979,509

[The department shall present a report to the joint subcommittee on natural resources of the 2007 legislative session that compares the cost of leasing a vehicle from the department of transportation to purchasing a vehicle.]

If House Bill No. 482 is not passed and approved, the Agriculture Development Division is reduced by \$38,554 in state special revenue in fiscal year 2006 and by \$39,367 in state special revenue in fiscal year 2007.

DEPARTMENT OF COMMERCE (6501)

1. Business Resources Division (51)							
1,701,642 230,034 3,797,862	0	0	5,729,538	1,704,909	231,030	3,794,584	5,730,523
a. Legislative Audit (Restricted/Biennial)	3,885	1,155	3,884	0	0	0	0
b. Economic Indian Development (Restricted/OTO)	500,000	0	0	500,000	0	0	500,000
c. Worker Training (Restricted/Biennial/OTO)							

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
1,400,000	0	0	0	1,400,000	0	0	1,400,000
d. SBIR Federal Grant (OTO)	0	0	200,000	0	0	0	0
e. Made in Montana (Restricted/OTO)	100,000	0	0	100,000	0	0	100,000
f. Main Street Program (OTO)	0	125,000	0	0	125,000	0	125,000
2. Montana Promotion Division (52)	0	750,000	0	0	750,000	0	750,000
a. Legislative Audit (Restricted/Biennial)	0	19,386	0	0	19,386	0	0
3. Community Development Division (60)	217,001	862,649	7,931,971	220,000	862,779	7,929,866	9,012,645
a. Legislative Audit (Restricted/Biennial)	2,999	2,097	3,000	0	0	0	0
b. Coal Board Local Impact Grants (Biennial)	0	1,672,453	0	0	1,672,453	0	0
4. Housing Division (74)	0	0	5,880,420	0	0	6,130,146	6,130,146
a. Legislative Audit (Restricted/Biennial)	0	0	5,534	0	0	0	0
5. Director's Office/Management Services Division (81)	0	0	475,000	0	0	475,000	475,000
Total	3,925,527	3,662,774	18,297,671	3,924,909	1,968,809	18,329,596	24,223,314

[The department shall present a written report every 6 months beginning December 1, 2005, to the economic affairs interim committee on the status of grants and program implementation of the worker training program and the Indian country economic development program.]

	Fiscal 2006			Fiscal 2007			Total				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total					
D. CORRECTIONS AND PUBLIC SAFETY											
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
1,720,172	93,483	693,878	0	0	2,507,533	1,717,425	93,483	691,935	0	0	2,502,843
a. Federal Pass-Through Grants (Biennial)											
0	0	12,896,032	0	0	12,896,032	0	0	12,897,832	0	0	12,897,832
Total											
1,720,172	93,483	13,589,910	0	0	15,403,565	1,717,425	93,483	13,589,767	0	0	15,400,675
All remaining federal pass-through grants appropriations, including reversion, for the 2005 biennium are authorized to continue and are appropriated in fiscal year 2006 and fiscal year 2007.											
If House Bill No. 476 is not passed and approved, Justice System Support Service is reduced by \$93,483 in state special revenue in each fiscal year of the 2007 biennium.											
DEPARTMENT OF JUSTICE (4110)											
1. Legal Services Division (01)											
3,571,073	313,534	442,453	0	0	4,327,060	3,570,279	314,424	442,368	0	0	4,327,071
a. Major Litigation (Biennial)											
400,000	0	0	0	0	400,000	0	0	0	0	0	0
b. Water Court Claims (Biennial/OTO)											
0	49,000	0	0	0	49,000	0	49,000	0	0	0	49,000
2. Office of Consumer Protection (02)											
785	496,118	0	0	0	496,903	1,400	495,843	0	0	0	497,243
3. Gambling Control Division (07)											
0	2,133,209	0	826,070	0	2,959,279	0	2,134,189	0	826,498	0	2,960,687
a. Accounting/Reporting System (Restricted/Biennial/OTO)											
0	1,065,000	0	435,000	0	1,500,000	0	0	0	0	0	0

	General Fund	State Special Revenue	Fiscal 2006			Other	Total	General Fund	State Special Revenue	Fiscal 2007			Other	Total
			Federal Special Revenue	Proprietary						Federal Special Revenue	Proprietary			
4. Motor Vehicle Division (12)														
5,388,911	3,729,602	0	0	0	0	0	9,118,513	5,397,570	3,735,314	0	0	0	0	9,132,884
a. HB 577 Interest (Biennial)														
0	210,000	0	0	0	0	0	210,000	0	0	0	0	0	0	0
b. HB 261 Interest (Restricted/Biennial)														
0	1,200,000	0	0	0	0	0	1,200,000	0	0	0	0	0	0	0
c. Reissue License Plates (OTO)														
192,470	0	0	0	0	0	0	192,470	0	0	0	0	0	0	0
d. Website Fees (Biennial)														
0	0	0	0	50,000	0	0	50,000	0	0	0	0	0	0	0
e. Support Patriot Act (OTO)														
101,180	0	0	0	0	0	0	101,180	95,138	0	0	0	0	0	95,138
f. Revising Motor Vehicle Laws — HB 671														
0	0	0	0	262,500	0	0	262,500	0	0	0	525,000	0	0	525,000
g. Revising Motor Vehicle Laws — SB 285														
47,813	0	0	0	0	0	0	47,813	44,837	0	0	0	0	0	44,837
h. Programming Costs — Motor Vehicle Legislation (Restricted/OTO)														
30,716	20,478	0	0	0	0	0	51,194	0	0	0	0	0	0	0
i. Quadricycles Registration (OTO)														
9,184	6,122	0	0	0	0	0	15,306	0	0	0	0	0	0	0
5. Highway Patrol Division (13)														
573,623	19,343,696	288,108	0	0	0	0	20,205,427	764,562	19,534,058	0	0	0	0	20,298,620
a. Prisoner Per Diem (Biennial)														
0	1,988,342	0	0	0	0	0	1,988,342	0	0	0	0	0	0	0
6. Division of Criminal Investigation (18)														
3,542,285	1,524,729	1,170,723	0	0	0	0	6,237,737	3,672,480	1,491,457	1,191,710	0	0	0	6,355,647
a. Miles City Narcotics Agent (OTO)														
61,451	0	0	0	0	0	0	61,451	0	0	0	0	0	0	0

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. Medicaid Fraud Program (OTO)							
6,498 0 19,495							
c. Medicaid Fraud Agent (OTO)							
15,500 0 46,500							
d. Adjustment to Base (OTO)							
42,000 0 0 0 0 42,000							
7. County Attorney Payroll (19)							
1,912,588 0 0 0 1,912,588							
8. Central Services Division (28)							
330,753 521,406 0 55,185							
a. Legislative Audit (Restricted/Biennial)							
26,715 34,172 0 1,243							
9. Information Technology Services Division (29)							
2,916,655 1,410,520 80,902 13,321							
a. Criminal History Data Coordination (Restricted/Biennial/OTO)							
0 250,000 0 0 250,000							
10. Forensic Sciences Division (32)							
2,753,013 303,204 91,134 0 3,147,351							
a. Requiring Felons to Submit DNA Samples—HB 113 (Biennial)							
0 0 409,480 0 409,480							
Total							
21,923,213 34,599,132 2,548,795 1,643,319 60,714,459 21,530,013 29,990,398 1,852,558 1,417,549 0 54,790,518							

If House Bill No. 782 is not passed and approved, Water Court Claims is void in its entirety.

If House Bill No. 425 is not passed and approved, then Office of Consumer Protection is decreased by \$785 in general fund money and \$496,118 in state special revenue in fiscal year 2006 and by \$1,400 in general fund money and \$495,843 in state special revenue in fiscal year 2007, which reflects the current appropriations for administration and enforcement functions relating to unfair trade practices and consumer protection and telemarketing laws in the consumer protection office in the department of administration. The legislative fiscal division and the office of budget and program planning are authorized to transfer all fiscal year 2004

Fiscal 2006			Fiscal 2007		
General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Total			Total		
			Other	Proprietary	Other
			Total		

expenditures and fiscal year 2005 appropriations from the department of administration to the department of justice for the purpose of display in the legislative fiscal division 2007 biennium fiscal report.

At the beginning of fiscal year 2006, \$98,000 of the amount in excess of the \$100 million base amount that cannot be used for other purposes is transferred from the resource indemnity tax trust to state special revenue for the attorney general's office.

If House Bill No. 102 is not passed and approved, there is appropriated up to \$1,200,000 each fiscal year from the highway patrol retirement clearing account to the department for payments to the Montana highway patrol pension fund.

If House Bill No. 99 is not passed and approved, Prisoner Per Diem is reduced by \$573,623 in general fund money in fiscal year 2006 and by \$764,562 in general fund money in fiscal year 2007.

~~[The department shall prepare an economic analysis that compares the value of a purchase by the state versus the continued lease by the state of the forensic lab facility located in Missoula. The department shall present this analysis to the legislative finance committee at its first meeting following July 1, 2005.]~~

The legislature approved the attorney general's request for 2 FTE and general fund money of \$101,180 in fiscal year 2006 and \$95,138 in fiscal year 2007 to support the Patriot Act. These FTE will provide auditing and public contact services regarding issues surrounding the Patriot Act. This approval is contingent upon a current level fund transfer by the department and verified by the budget director.

The legislature approved the attorney general's request for 1 FTE and general fund money of \$61,451 in fiscal year 2006 to support the Miles City narcotics program. This approval is contingent upon a current level fund transfer by the department and verified by the budget director.

The legislature approved the attorney general's request for \$6,498 in general fund money and \$19,495 in federal funds in fiscal year 2006 to support the medicaid fraud program. This approval is contingent upon passage and approval of House Bill No. 102.

The legislature approved the attorney general's request for 1 FTE and \$15,500 of general fund money and \$46,500 in federal funds in fiscal year 2006 and \$15,500 of general fund money and \$46,500 in federal funds in fiscal year 2007 to support a medicaid fraud agent and the fraud program. This approval is contingent upon passage and approval of House Bill No. 102.

The legislature approved the attorney general's request for \$42,000 in general fund money in fiscal year 2006 to the department of criminal investigation's base budget. This approval is contingent upon passage and approval of House Bill No. 102.

If Senate Bill No. 282 is not passed and approved, Division of Criminal Investigation is reduced by \$16,760 in state special revenue in fiscal year 2006 and by \$5,760 in state special revenue in fiscal year 2007.

Revising Motor Vehicle Laws — HB 671 is contingent upon passage and approval of House Bill No. 671.

				<u>Fiscal 2006</u>				<u>Fiscal 2007</u>			
				<u>General Fund</u>	<u>State Special Revenue</u>	<u>Federal Special Revenue</u>	<u>Proprietary</u>	<u>Other</u>	<u>Total</u>	<u>General Fund</u>	<u>State Special Revenue</u>
Revising Motor Vehicle Laws — SB 285 is contingent upon passage and approval of Senate Bill No. 285.											
If House Bill No. 192 is not passed and approved, Programming Costs — Motor Vehicle Legislation is reduced by \$8,496 in general fund money and by \$5,664 in state special revenue in fiscal year 2006.											
If House Bill No. 541 is not passed and approved, Programming Costs — Motor Vehicle Legislation is reduced by \$2,508 in general fund money and by \$1,672 in state special revenue in fiscal year 2006.											
If House Bill No. 673 is not passed and approved, Programming Costs — Motor Vehicle Legislation is reduced by \$6,696 in general fund money and by \$4,464 in state special revenue in fiscal year 2006.											
If Senate Bill No. 423 is not passed and approved, Programming Costs — Motor Vehicle Legislation is reduced by \$4,188 in general fund money and by \$2,792 in state special revenue in fiscal year 2006.											
If Senate Bill No. 518 is not passed and approved, Programming Costs — Motor Vehicle Legislation is reduced by \$8,828 in general fund money and by \$5,886 in state special revenue in fiscal year 2006.											
If Senate Bill No. 318 is not passed and approved, Quadricycles Registration is void in its entirety.											
PUBLIC SERVICE COMMISSION (4201)											
1.	Public Service Regulation Program (01)										
0	2,751,260	13,732	0	0	2,764,992	0	2,755,335	13,732	0	0	2,769,067
a.	Legislative Audit (Restricted/Biennial)										
0	20,710	0	0	0	20,710	0	0	0	0	0	0
b.	Computer Replacement (Restricted/OTO)										
0	48,274	0	0	0	48,274	0	4,095	0	0	0	4,095
c.	New Commissioner Training (OTO)										
0	4,000	0	0	0	4,000	0	4,000	0	0	0	4,000
d.	Consultant Funds (Biennial)										
0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
Total											

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
	0	2,874,244	13,732	0	2,887,976	13,732
DEPARTMENT OF CORRECTIONS (6401)						
1. Administration and Support Services (01)						
9,948,071	243,938	0	56,279	0	10,248,288	0
a. Legislative Audit (Restricted/Biennial)						
94,674	0	0	0	0	94,674	0
2. Community Corrections (02)						
29,545,835	530,002	0	0	0	30,075,837	0
3. Secure Facilities (03) (Biennial)						
55,677,904	1,239,351	93,584	0	0	57,010,839	93,584
4. Montana Correctional Enterprises (04)						
1,596,587	0	0	431,518	0	2,028,105	0
a. License Plate Reissue (Restricted/OTO)						
3,853,751	0	0	0	0	3,853,751	0
5. Juvenile Corrections (05)						
10,243,060	288,378	432,976	0	0	10,964,414	432,976
a. Juvenile Placement Funds (Restricted)						
7,542,344	418,443	28,292	0	0	7,989,079	28,292
Total	118,502,226	2,720,112	554,852	487,797	122,264,987	554,852

124,642,401
 [The department shall report annually to the legislative finance committee by September 15 on the amounts collected by the restitution unit, the amounts disbursed to victims of crime by that unit, and the cost to administer the program.]

If Senate Bill No. 426 is not passed and approved, Administration and Support Services is reduced by \$20,000 in general fund money in fiscal year 2006.

If Senate Bill No. 146 is not passed and approved, Administration and Support Services is increased by \$50,141 in general fund money in fiscal year 2007.

			<u>Fiscal 2006</u>			<u>Fiscal 2007</u>		
	<u>General Fund</u>	<u>State Special Revenue</u>	<u>Federal Special Revenue</u>	<u>Proprietary</u>	<u>Other</u>	<u>Total</u>	<u>General Fund</u>	<u>State Special Revenue</u>
[The department shall report to the legislative finance committee, the law and justice interim committee, the governor, and the corrections advisory council by December 31, 2006, the results of any performance audit done on any prelease center, regional prison, or private prison.]								
If House Bill No. 288 is not passed and approved, Administration and Support Services is reduced by \$122,339 in state special revenue in fiscal year 2006 and by \$112,635 in state special revenue in fiscal year 2007.								
If the department determines through forecasts that it will experience a shortfall in the general fund appropriation in either fiscal year of the 2007 biennium for secure facilities, the department may transfer up to \$1,500,000 in general fund money that is available and unencumbered in that fiscal year from Juvenile Placement Funds (Restricted) to Secure Facilities (03).								
DEPARTMENT OF LABOR AND INDUSTRY (6602)								
1. Workforce Services Division (01)								
525,045	8,482,799	24,074,562	0	0	33,082,406	524,422	8,643,287	23,873,074
2. Unemployment Insurance Division (02)								
0	660,023	8,811,624	0	0	9,471,647	0	660,023	8,809,374
a. SUTA Dumping (OTO)								
0	0	17,250	0	0	17,250	0	0	0
3. Commissioner's Office/Centralized Services Division (03)								
194,140	762,025	461,557	80,207	0	1,497,929	193,775	762,600	463,383
4. Employment Relations Division (04)								
856,859	7,426,562	635,912	0	0	8,919,333	857,056	7,422,121	638,070
a. INGENIX Software Purchase (OTO)								
0	50,000	0	0	0	50,000	0	0	0
5. Business Standards Division (05)								
0	11,930,204	0	0	0	11,930,204	0	11,935,642	0
6. Montana Community Services (07)								
37,462	0	2,404,135	0	0	2,441,597	60,514	0	2,405,083
7. Workers' Compensation Court (09)								
0	554,135	0	0	0	554,135	0	554,376	0

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
312,343	0	2,740,064	0	310,191	0	2,740,957	3,051,148
a. Legislative Audit (Restricted/Biennial)							
592	0	5,325	0	0	0	0	0
6. Disaster and Emergency Services (21)							
628,114	114,437	1,771,067	0	621,864	114,437	1,778,715	2,515,016
a. Legislative Audit (Restricted/Biennial)							
1,183	0	15,385	0	0	0	0	0
7. Veterans' Affairs Program (31)							
658,159	867,927	0	0	659,551	866,963	0	1,526,514
a. Legislative Audit (Restricted/Biennial)							
1,646	1,312	0	0	0	0	0	0
b. Purchase Mobile Van (OTO)							
0	75,000	0	0	0	0	0	0
c. Liberty House Project (Restricted)							
100,000	0	0	0	0	0	0	0
Total							
4,711,153	1,084,976	12,344,963	0	4,602,138	1,082,700	12,376,526	18,061,364
The Liberty House Project may be used only for the purpose of constructing a liberty house at Fort Harrison VA medical center.							
TOTAL SECTION D							
148,470,270	71,237,695	65,457,292	2,211,323	150,383,881	66,665,417	64,576,419	283,604,268

	Fiscal 2006			Total	General Fund	State Special Revenue	Fiscal 2007		Total
	General Fund	State Special Revenue	Federal Special Revenue				Proprietary	Other	
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)									
E. EDUCATION									
1. OPI Administration (06)									
4,702,474	217,779	11,899,897	0	16,820,150	4,763,796	217,784	12,200,022	0	17,181,602
a. Indian Education for All (Biennial)									
1,155,423	0	0	0	1,155,423	1,155,423	0	0	0	1,155,423
b. Special Ed Audiology (OTO)									
85,000	0	0	0	85,000	85,000	0	0	0	85,000
c. Student Information Data System (Biennial/OTO)									
2,455,026	0	0	0	2,455,026	370,974	0	0	0	370,974
2. Distribution to Public Schools (09)									
0	0	133,537,139	0	133,537,139	0	0	140,457,910	0	140,457,910
a. Base Aid (Restricted)									
432,454,324	0	0	0	432,454,324	436,372,548	0	0	0	436,372,548
b. Special Education (Restricted)									
38,506,122	0	0	0	38,506,122	39,348,289	0	0	0	39,348,289
c. Transportation Aid (Restricted)									
12,142,550	0	0	0	12,142,550	12,242,550	0	0	0	12,242,550
d. School Facility Reimbursement (Restricted)									
9,411,293	0	0	0	9,411,293	9,411,293	0	0	0	9,411,293
e. In-State Treatment (Restricted)									
974,896	0	0	0	974,896	974,896	0	0	0	974,896
f. Secondary Vocational Education (Restricted)									
1,000,000	0	0	0	1,000,000	1,000,000	0	0	0	1,000,000
g. Adult Basic Education (Restricted)									
275,000	0	0	0	275,000	275,000	0	0	0	275,000
h. Gifted and Talented (Restricted)									

	Fiscal 2006			Fiscal 2007		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
	250,000	0	0	0	0	0
i. School Food (Restricted)						
	648,653	0	0	648,653	0	0
j. School District Audits (Restricted)						
	151,356	0	0	151,356	0	0
k. HB 124 Block Grants (Restricted)						
	50,213,191	0	0	50,213,191	0	0
l. School Facility Increase (Restricted/OTO)						
	987,842	0	0	987,842	0	0
m. Indian Education for All (Restricted)						
	550,000	0	0	550,000	0	0
n. Traffic Safety Distribution						
	0	750,000	0	0	750,000	0
Total	555,963,150	967,779	145,437,036	0	702,367,965	559,185,449

The office of public instruction may distribute funds from the appropriation for in-state treatment to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.

All revenue up to \$1.1 million in the state traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue programs in state level activities and in local educational activities and all general fund appropriations in local educational activities are biennial.

[The office of public instruction shall include as a part of its work plan priorities for the next biennium the prevention of dropouts and the reduction of dropout rates in Montana's public schools and report on these efforts to the education and local government interim committee before September 1, 2006.]

Base Aid will be decreased by \$183,000 in fiscal year 2007 if Senate Bill No. 48 is not passed and approved. Base Aid will be decreased in fiscal year 2006 by \$5,008 if House Bill No. 22 is not passed and approved. Base Aid will be decreased by \$21,200 in fiscal year 2007 if Senate Bill No. 296 is not passed and approved. Base Aid will be increased by \$700 in fiscal year 2006 and by \$263,400 in fiscal year 2007 if Senate Bill No. 276 is not passed and approved.

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total
1. Promotion of the Arts (01)							
382,125	180,978	617,734	0	1,180,837	375,905	182,702	617,734
a. Legislative Audit (Restricted/Biennial)							
19,231	0	0	0	19,231	0	0	0
b. Additional Money for Loss of C&A Interest (Restricted/OTO)							
100,275	0	0	0	100,275	0	0	0
c. E-Grants and Database System (Restricted/OTO)							
5,000	0	0	0	5,000	5,000	0	0
Total	506,631	180,978	617,734	0	1,305,343	380,905	182,702
All federal funds in Montana Arts Council are biennial appropriations.							
MONTANA STATE LIBRARY COMMISSION (5115)							
1. Statewide Library Resources (01)							
1,759,342	1,081,518	1,180,694	0	4,021,554	1,560,479	1,082,210	780,694
a. Legislative Audit (Restricted/Biennial)							
17,751	0	0	0	17,751	0	0	0
b. Computer Equipment Upgrade (Restricted/OTO)							
70,000	0	0	0	70,000	0	0	0
Total	1,847,093	1,081,518	1,180,694	0	4,109,305	1,560,479	1,082,210
Montana State Library Commission funding includes biennial appropriations of \$205,662 in general fund money and \$800,000 in federal funds for grants to local libraries.							

If House Bill No. 482 is not passed and approved, Statewide Library Resources is reduced by \$32,771 in state special revenue in fiscal year 2006 and by \$33,462 in state special revenue in fiscal year 2007.

	Fiscal 2006			Total	Fiscal 2007			Total					
	General Fund	State Special Revenue	Federal Special Revenue		Proprietary	Other	Proprietary		Other				
MONTANA HISTORICAL SOCIETY (5117)													
1. Administration Program (01)													
929,586	79,665	133,432	439,604	0	1,582,287	938,819	78,529	133,369	431,086	0	1,581,803		
a. Legislative Audit (Restricted/Biennial)													
29,586	0	0	0	0	29,586	0	0	0	0	0	0		
b. Computer Equipment Replacement (Restricted/Biennial/OTO)													
55,074	0	0	0	0	55,074	0	0	0	0	0	0		
c. Computer Server (Restricted/Biennial/OTO)													
20,000	0	0	0	0	20,000	0	0	0	0	0	0		
2. Library Program (02)													
743,513	2,624	0	66,970	0	813,107	743,517	2,680	0	66,962	0	813,159		
3. Museum Program (03)													
184,830	55,584	0	11,615	0	252,029	184,825	55,583	0	11,614	0	252,022		
4. Publications (04)													
50,503	0	0	435,825	0	486,328	50,671	0	0	435,921	0	486,592		
5. Historic Preservation Program (06)													
40,819	0	658,109	5,000	0	703,928	41,170	0	657,420	5,000	0	703,590		
Total													
2,053,911	137,873	791,541	959,014	0	3,942,339	1,959,002	136,792	790,789	950,583	0	3,897,166		
It is the intent of the legislature that the department of commerce use lodging facility use taxes to fund \$625,703 in fiscal year 2006 and \$521,562 in fiscal year 2007													

[illegible]

	Fiscal 2006			Fiscal 2007			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Total
450,000	0	0	0	0	0	0	450,000
5. OCHE — Talent Search (06)							
99,761	0	3,105,037	0	0	0	0	3,205,555
a. Montana Conference on Race (Biennial)							
0	50,000	0	0	0	0	0	0
6. OCHE — C.D. Perkins Administration (08)							
90,414	0	6,272,301	0	0	0	0	6,240,409
7. OCHE — Appropriation Distribution Transfers (09)							
107,760,789	13,373,391	0	0	0	0	0	121,364,896
a. Legislative Audit (Restricted/Biennial)							
544,376	0	0	0	0	0	0	0
b. Equipment/Program Development — 2-Year Degree Programs (Restricted/Biennial/OTO)							
1,960,678	0	0	0	0	0	0	2,500,000
c. Class 8 Threshold — Business Tax Exemption							
11,610	0	0	0	0	0	0	30,889
d. Distance Learning Initiative (Biennial/OTO)							
300,000	0	0	0	0	0	0	0
e. Agricultural Experiment Station							
10,311,165	0	0	0	0	0	0	10,321,121
f. Extension Service							
4,783,103	0	0	0	0	0	0	4,871,848
g. Forest and Conservation Experiment Station							
971,324	0	0	0	0	0	0	968,731
h. Bureau of Mines and Geology							
1,693,291	666,000	0	0	0	0	0	2,358,258
i. Bureau Ground Water Program (OTO)							
0	64,697	0	0	0	0	0	69,038
j. Fire Services Training School							

	Fiscal 2006			Fiscal 2007			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
582,015	0	0	0	582,015	0	0	580,010
k. Family Practice Residency Program							
319,366	0	0	0	319,366	0	0	319,366
l. Motorcycle Safety Training Program							
0	220,000	0	0	220,000	0	0	220,000
m. Institute for Biobased Products and Food Science @ AES							
200,000	0	0	0	200,000	0	0	200,000
n. Dental Hygiene Program @ Great Falls-COT (Restricted)							
235,000	0	0	0	235,000	0	0	235,000
o. New Extension Agent for Meagher County (Restricted)							
35,103	0	0	0	35,103	0	0	35,103
p. Yellow Bay Biological Station (Restricted)							
100,000	0	0	0	100,000	0	0	100,000
8. Tribal College Assistance Program (11) (Biennial)							
400,000	0	0	0	400,000	0	0	0
a. Enhancing Tribal College Assistance Program (Biennial/OTO)							
1,000,000	0	0	0	1,000,000	0	0	1,000,000
b. Special Nonbeneficiary Student Assistance (Biennial/OTO)							
500,000	0	0	0	500,000	0	0	0
9. OCHE — Guaranteed Student Loan (12)							
0	0	34,745,685	0	34,745,685	0	37,003,555	37,003,555
a. Legislative Audit (Restricted/Biennial)							
0	0	13,314	0	13,314	0	0	0
10. OCHE — Board of Regents (13)							
44,485	0	0	0	44,485	0	0	44,485
Total							
151,031,786	14,399,088	44,725,056	0	210,155,930	14,628,149	46,844,599	211,971,348
			0			0	0

Fiscal 2006			Fiscal 2007		
General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue

Proprietary Other Total

Of the amount in Governor's Postsecondary Scholarship Program, \$22,000 in fiscal year 2006 and \$22,000 in fiscal year 2007 are restricted for administration costs of the scholarship program.

The budget amount for each full-time equivalent student at the community colleges, including Summitnet, is \$5,203 each year of the 2007 biennium. The general fund appropriation for OCHE — Community College Assistance provides 53% of the budget amount for each full-time equivalent student each year of the 2007 biennium. The remaining 47% of the budget amount for each full-time equivalent student must be paid from funds other than those appropriated for OCHE — Community College Assistance.

The general fund appropriation for OCHE — Community College Assistance is calculated to fund education in the community colleges for an estimated 2,631 resident FTE students in fiscal year 2006 and 2,770 in fiscal year 2007. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated numbers for the biennium, the commissioner of higher education shall revert general fund money to the state in accordance with 17-7-142.

Total Summitnet costs are estimated to be \$25,000 each year for the community colleges, Summitnet costs charged to the community colleges for each year may not exceed \$8,000 each for Dawson and Miles community colleges and \$9,000 for Flathead Valley community college.

Total audit costs are estimated to be \$40,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 53% of the total audit costs in the 2007 biennium. The remaining 47% of these costs must be paid from funds other than those appropriated for OCHE — Community College Assistance — Legislative Audit. Audit costs charged to the community colleges for the biennium may not exceed \$12,500 each for Dawson and Miles community colleges and \$15,000 for Flathead Valley community college.

Community College Assistance Special Funding is appropriated as a block grant allocation, rather than following the standard three-factor funding formula, because the legislature has concerns about the cost of education factor. The legislature requests that the legislative finance committee make it a high priority to look at the community college funding formula and statutes and report to the 2007 legislature on recalibrating the cost of education factor and other funding issues.

Revenue anticipated to be received by the Montana university system units and colleges of technology includes:

- (1) interest earnings of \$791,274 each year of the 2007 biennium; and
- (2) other revenue of \$1,301,198 each year of the 2007 biennium.

These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE — Appropriation Distribution Transfers.

General Fund	State Special Revenue	Fiscal 2006		Total	Other	Fiscal 2007			Total
		General Fund	Proprietary			General Fund	State Special Revenue	Federal Special Revenue	

The general fund and millage appropriation in OCHE — Appropriation Distribution Transfers is calculated to fund education in the 4-year units and the colleges of technology for an estimated 26,918 resident student FTE students in fiscal year 2006 and 27,188 resident students in fiscal year 2007. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be \$544,376 for the university system educational units, other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in OCHE — Appropriation Distribution Transfers.

OCHE — Appropriation Distribution Transfers includes \$817,960 for the 2007 biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, \$126,400 in fiscal year 2006 and \$88,800 in fiscal year 2007; Montana tech of the university of Montana, \$28,000 in fiscal year 2006; Montana state university-northern, \$101,000 in fiscal year 2006 and \$67,000 in fiscal year 2007; Montana state university-Bozeman \$58,000 in fiscal year 2006; Montana state university-Billings, \$133,500 in fiscal year 2006 and \$105,500 in fiscal year 2007; and western Montana college of the university of Montana, \$12,410 in fiscal year 2006 and \$11,350 in fiscal year 2007.

The Montana university system shall pay \$88,506 for the 2007 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Revenue anticipated to be received by the agricultural experiment station includes:

- (1) interest earnings and other revenue of \$60,308 each year of the 2007 biennium;
- (2) federal revenue of \$1,992,807 in fiscal year 2006 and \$1,992,807 in fiscal year 2007; and
- (3) sales revenue of \$1 million in fiscal year 2006 and \$1 million in fiscal year 2007.

Revenue anticipated to be received by the extension service includes:

- (1) interest earnings of \$5,034 each year of the 2007 biennium; and
- (2) federal revenue of \$2,254,555 in fiscal year 2006 and \$2,254,555 in fiscal year 2007.

Anticipated interest revenue of \$1,070 in each year of the 2007 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

	Fiscal 2006				Total	Fiscal 2007				Total		
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary		Other	General Fund	State Special Revenue	Federal Special Revenue		Proprietary	Other
house equipment. The office of the commissioner of higher education shall certify to the office of budget and program planning that an allowable funding match has been committed from an eligible revenue source, as evidenced by a commitment letter from that funding source.												
At the beginning of fiscal year 2006, \$133,735 of the amount in excess of \$100 million is transferred from the resource indemnity tax trust to the state special revenue fund for the Bureau Ground Water Program.												
New Extension Agent for Meagher County funding is contingent upon approval of a mill levy vote in Meagher County to approve the county matching funds for the new extension agent.												
Yellow Bay Biological Station is restricted to laboratory work associated with Flathead basin water quality monitoring.												
[Enhancing Tribal College Assistance Program includes a requirement that the tribal colleges, through the commissioner of higher education, submit a report to the legislative finance committee by November 1, 2006, on the use of these funds and the status of the equipment and tribal history requirement as part of Indian education for all.]												
TOTAL SECTION E	715,942,824	17,246,728	192,854,926	959,014	0	927,003,492	718,089,989	17,475,434	201,794,613	950,583	0	938,310,619
TOTAL STATE FUNDING	1,301,160,894	548,675,945	1,601,462,686	13,154,826	500,000	3,464,954,351	1,303,334,655	536,162,391	1,642,446,794	12,909,485	500,000	3,495,353,325

Section 10. Rates. Internal service fund type fees and charges established by the legislature for the 2005 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	<u>Fiscal 2006</u>	<u>Fiscal 2007</u>
DEPARTMENT OF TRANSPORTATION — 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
Per Hour Assigned	\$1.377	\$1.408
Per Mile Operated	\$0.069	\$0.069
b. Class 04 (large utilities)		
Per Hour Assigned	\$1.856	\$1.955
Per Mile Operated	\$0.081	\$0.081
c. Class 06 (midsize compacts)		
Per Hour Assigned	\$1.196	\$1.186
Per Mile Operated	\$0.048	\$0.048
d. Class 07 (small pickups)		
Per Hour Assigned	\$1.153	\$1.106
Per Mile Operated	\$0.073	\$0.073
e. Class 11 (large pickups)		
Per Hour Assigned	\$1.521	\$1.653
Per Mile Operated	\$0.095	\$0.095
f. Class 12 (vans – all type)		
Per Hour Assigned	\$1.399	\$1.432
Per Mile Operated	\$0.084	\$0.084

2. Equipment Program

All of Program Operations

60-day working capital reserve

DEPARTMENT OF REVENUE – 5801

1. Customer Service Center

Delinquent Account Collection Fee (percent of amount collected)*

10.0%

10.0%

*The department may not collect the delinquent account collection fee for debt codes 43 (collection of overpaid child support payments made to custodial parents) or 44 (collection of delinquent child support payments from noncustodial parents).

DEPARTMENT OF ADMINISTRATION — 6101

1. Administration and Financial Services Division

a. Legal Services Unit

Total Allocation of Costs

\$182,525

\$182,525

b. Management Services Unit

Total Allocation of Costs

\$537,492

\$537,492

Portion of Unit for Human Resources

Charge per FTE of User Programs	\$476	\$475
c. Warrant Writer Program		
Mailer Warrants	\$0.58331	\$0.58089
Nonmailer Warrants	\$0.18159	\$0.17917
Duplicate Warrants	\$6.03998	\$6.03939
External Warrants	\$0.15575	\$0.15333
Emergency Warrants	\$4.70228	\$4.70170
Direct Deposit	\$0.15578	\$0.15510

The department may charge the office of public defender up to \$55,000 in general fund money in fiscal year 2006 and \$25,000 in general fund money in fiscal year 2007 for human resources and payroll costs associated with the office. This authorization is contingent upon the passage and approval of Senate Bill No. 146.

If House Bill No. 425 is passed and approved, Legal Services Unit Total Allocation of Costs is reduced by \$49,631 in fiscal year 2006 and by \$49,631 in fiscal year 2007. The department may reallocate the costs of the Legal Services Unit to programs served by the unit as necessary to address impacts because of House Bill No. 425.

2. General Services Division

a. Facilities Management Bureau		
Office Rent (\$ per sq. ft.)	\$6.613	\$6.681
Storage Rent (\$ per sq. ft.)	\$3.901	\$3.969
Capitol Grounds Maintenance	\$0.3896/sq.ft.	\$0.3896/sq.ft.
In-House Project Management (% of cost)	15%	15%
Contracted Project Management (% of cost)	5%	5%
b. Print and Mail Services		
Interagency Mail (total amount allocated to agencies)	\$162,180	\$162,180
All Other Operations Except Interagency Mail	45-day working capital reserve	
c. Central Stores Program		
Vendor-Provided Service		
Markup as a Percent of Retail Cost of Goods Sold	3.0%	3.0%
Direct State Service		
Forms (percent markup)	100%	100%
Office Supplies (percent markup)	25%	25%
Computer Paper (percent markup)	25%	25%
Fine Paper (percent markup)	25%	25%
Course Paper (percent markup)	25%	25%

Janitorial (percent markup)	25%	25%
d. Statewide Fueling Network Program		
Markup as a Percent of Gross Fuel Purchases by Users	0.5%	0.5%
e. State Procurement Card Program		
Monthly Card Fee (per card per month)	\$1.00	\$1.00

Capitol Grounds Maintenance is contingent upon passage and approval of House Bill No. 109.

The department may charge fees identified in the Central Stores Program under the direct state service heading if the department operates a state-provided central stores program using state employees and funds to administer, store, and deliver products to state and local government consumers. If the governor directs the department, by executive order, to provide services of the central stores program using a private vendor, the department may charge fees identified in the Central Stores Program under the vendor-provided service heading, and revenue derived from central stores program retail markup rates may be used only for personal services and operating expenses directly supporting coordination and contract administration costs for supplies purchased through a contracted vendor for central stores supplies and may not be used for office or warehouse rent or lease costs of facilities not owned by the state of Montana.

3. Information Technology Services Division

Data Network Fee (maximum per connected terminal per month)*	\$72.60	\$72.60
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*The data network fee is the greater of the maximum per connected terminal rate or the amount in agency budgets.

SABHRS Cost Allocation (total allocation to users)	\$6,335,169	\$6,335,169
All Operations Except SABHRS Cost Allocation	30-day working capital reserve	

4. State Personnel Division

a. Professional Development Center		
Training Services per Hour Staff Cost	\$127.86	\$127.97
b. Payroll Processing		
Payroll Fees (per employee processed per pay period)	\$1.34	\$1.33

5. Risk Management & Tort Defense

General Liability (total allocation to agencies)	\$7,203,992	\$7,242,383
Auto Liability, Comprehensive, and Collision (total allocation to agencies)	\$1,668,644	\$1,671,416
Aviation (total allocation to agencies)	\$174,014	\$174,003
Property/Miscellaneous (total allocation to agencies)	\$5,385,291	\$5,412,054

DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201

1. Administration and Finance (% markup)		
a. Warehouse Overhead	5%	5%
2. Vehicle Account Rates Per Mile		
a. Sedans	\$0.30	\$0.30
b. Vans	\$0.33	\$0.33
c. Utilities	\$0.37	\$0.37
d. Grounds Maintenance	\$1.05	\$1.10
e. Pickup 1/2 Ton	\$0.32	\$0.32
f. Pickup 3/4 Ton	\$0.37	\$0.37
3. Aircraft Per Hour Rates		
a. Two-Place Single Engine	\$ 59.56	\$ 62.54
b. Partnavia	\$297.78	\$297.78
c. Turbine Helicopters	\$363.01	\$363.01
4. Duplicating – Number of Copies (includes paper)		
a. 1-20	\$0.045	\$0.050
b. 21-100	\$0.030	\$0.035
c. 101-1000	\$0.025	\$0.030
d. 1001-5000	\$0.020	\$0.025
e. Color (per sheet)	\$0.25	\$0.25
5. Bindery		
a. Collating (per sheet)	\$0.005	\$0.005
b. Hand Stapling (per set)	\$0.015	\$0.015
c. Saddle Stitch (per set)	\$0.030	\$0.030
d. Folding (per sheet)	\$0.005	\$0.005
e. Punching (per sheet)	\$0.001	\$0.001
f. Cutting (per minute)	\$0.550	\$0.550
6. Parks		
a. Visitor Center Goods (percent markup)	40%	40%

If House Bill No. 109 is not passed and approved, the following is added to the department of fish, wildlife, and parks rates in this section:

Capitol Grounds Maintenance	\$0.3896/sq.ft.	\$0.3896/sq.ft.
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DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301

1. Central Management		
a. Expenses Against Personal Services	24%	24%

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706

1. Air Operations Program		
a. Bell UH-1H	\$875.00	\$875.00
b. Bell Jet Ranger	\$375.00	\$375.00

c. Cessna 180 Series \$ 95.00 \$ 95.00

DEPARTMENT OF COMMERCE – 6501

1. Board of Investments

For the purposes of [this act], the legislature defines “rates” as the total collections necessary to operate the board of investments as follows:

a. Administration Charge (total) \$3,203,219 \$3,128,734

2. Director’s Office/Management Services

a. Management Services Indirect Charge Rate 13.7% 13.65%

DEPARTMENT OF JUSTICE – 4110

1. Agency Legal Services

a. Attorney (per hour) \$71.80 74.00

b. Paralegal (per hour) \$44.00 \$46.00

DEPARTMENT OF CORRECTIONS - 6401

1. Secure Facilities

a. Cook/Chill Rate to Montana State Prison \$1.37/meal \$1.37/meal

b. Cook/Chill Rate to Riverside Youth Correctional Facility \$2.01/meal \$2.01/meal

c. Cook/Chill Rate to WATCH DUI Unit \$1.59/meal \$1.59/meal

d. Cook/Chill Rate to Helena Prerelease \$2.01/meal \$2.01/meal

2. Montana Correctional Enterprises

a. Laundry Rate to Montana State Prison \$0.39/lb. \$0.39/lb.

b. Laundry Rate to Treasure State Correctional Training Center \$0.39/lb. \$0.39/lb.

c. Laundry Rate to Montana State Hospital \$0.38/lb. \$0.38/lb.

d. Laundry Rate to Montana Developmental Center \$0.46/lb. \$0.46/lb.

e. Laundry Rate to Riverside Youth Correctional Facility \$0.46/lb. \$0.46/lb.

DEPARTMENT OF LABOR AND INDUSTRY – 6602

1. Centralized Services Division

a. Cost Allocation Plan 8% 8%

2. Business Standards Division

a. House Bill No. 2 Programs Recharge Rate 44.8% 44.8%

MONTANA UNIVERSITY SYSTEM - 5100

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward

employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis.

Approved May 6, 2005

Note: The bracketed language in section 9 was stricken by Governor's line item veto dated May 6, 2005.

RESOLUTIONS
Passed by the
FIFTY-NINTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2005, through April 21, 2005

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND THE DEPARTMENT OF CORRECTIONS TO CONTINUE EFFORTS TOWARD INTRAAGENCY AND INTERAGENCY PREVENTION COORDINATION AND TO SUPPORT INTERAGENCY EFFORTS TO ASSIST MONTANANS IN NEED AND TO COMBAT THE SUBSTANTIAL EFFECTS OF SUBSTANCE ABUSE, ESPECIALLY METHAMPHETAMINE USE, ON OUR SOCIETY.

WHEREAS, the Department of Public Health and Human Services has made proposals regarding intraagency prevention coordination for the myriad of prevention programs at the Department that involve public health and prevention activities, including alcohol, tobacco, and other drug use and abuse prevention; and

WHEREAS, the Department of Public Health and Human Services and the Department of Corrections have teamed together in the "Building Bridges" effort to provide transition social services to offenders who are or will be released from incarceration; and

WHEREAS, the Board of Crime Control has restructured to include subcommittees on prevention and treatment and funds many prevention programs involving youth, crime, and drug control; and

WHEREAS, Governor Judy Martz held a Methamphetamine Summit to explore the policy options and strategies to reduce the production, distribution, and use of methamphetamine in Montana and energized many regions of the state to coordinate efforts at the local level and also reconvened the Montana Alcohol, Tobacco and Other Drug Control Policy Task Force to assist in developing policy initiatives for the future; and

WHEREAS, the majority of drug control efforts lie in local, state, tribal, and federal law enforcement agencies and with the Department of Justice, and law enforcement cannot solve the problem of substance abuse, especially methamphetamine use, alone and requires coordinated education, prevention, intervention, and treatment efforts throughout society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That all agencies in the Executive Branch, including those under the Governor, the Attorney General, and the Superintendent of Public Instruction, work together to coordinate education, prevention, and drug control efforts to enable and provide resources to local communities to combat the ill effects of abuse of legal and illegal substances and their concomitant effects on the public health and criminal justice systems.

(2) That Governor Schweitzer support efforts to coordinate substance abuse prevention and treatment activities within and between Executive Branch agencies and continue the efforts between the Departments of Public Health

and Human Services and Corrections to bridge offenders back into the community.

(3) That the Director of the Department of Public Health and Human Services support the efforts of the VISTA program and the Prevention Resource Center and maintain the Prevention Connection newsletter to disseminate information directly to communities.

(4) That the Director of the Department of Public Health and Human Services support a position to perform intraagency, cross-division planning and coordination for prevention activities, including the prevention of alcohol, tobacco, and other drug use and abuse, with other public health prevention efforts, including but not limited to the prevention of child abuse, teen pregnancy, HIV/AIDS, suicide, and the retail sale of alcohol and tobacco to minors.

(5) That the Board of Crime Control grow in its efforts to coordinate its substance abuse prevention, delinquency and crime prevention, and public safety programs with those at the Department of Public Health and Human Services and other agencies.

(6) That all agencies involved in prevention programs implement and continue collaborative efforts with Indian tribes.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENTER INTO NEGOTIATIONS WITH THE UNITED STATES BUREAU OF RECLAMATION TO DETERMINE THE AVAILABILITY AND COST OF WATER STORED BEHIND HUNGRY HORSE DAM FOR WHICH THE STATE OF MONTANA MIGHT CONTRACT TO SUPPORT FUTURE WATER DEVELOPMENT AND EXISTING WATER USE IN THE CLARK FORK RIVER BASIN.

WHEREAS, the 2001 Montana Legislature passed House Bill No. 397 creating the Clark Fork River basin task force and directing it to write a water management plan for the Clark Fork River basin that identifies options to protect the security of water rights, provides for the orderly development of water, and provides for the conservation of water in the future; and

WHEREAS, the Clark Fork task force on August 16, 2004, adopted "The Clark Fork River Basin Water Management Plan"; and

WHEREAS, the Clark Fork task force concludes in the plan that the basin's hydroelectric utility water rights likely pose a constraint on future basin water development and a risk to water use based on water rights junior to the hydroelectric rights; and

WHEREAS, Hungry Horse Reservoir was constructed and is operated by the United States Department of the Interior Bureau of Reclamation "for the purpose of irrigation and reclamation of arid lands, for controlling flood, improving navigation, regulating the flow of the South Fork of the Flathead

River, for the generation of electric energy, and for other beneficial uses primarily in the State of Montana, but also for downstream uses"; and

WHEREAS, in its application of water right, the United States Bureau of Reclamation claimed 3.5 million acre-feet of storage for future sales; and

WHEREAS, no contracts for the sale of Hungry Horse water have been issued to date; and

WHEREAS, the plan concludes that water stored in Hungry Horse Reservoir could be released in a manner that would allow new water development in the Clark Fork River basin without adversely affecting downstream existing hydroelectric water rights; and

WHEREAS, water stored in Hungry Horse Reservoir could also be released in the amount used by water users with water rights junior to the hydroelectric utilities, thereby precluding the need for the hydroelectric utilities to make a call on junior water right holders; and

WHEREAS, the plan recommends that the State of Montana open discussions with the United States Bureau of Reclamation to determine the availability and cost of temporary and long-term contracting options and to determine a quantity of firm storage available from Hungry Horse Reservoir for Montana uses other than hydroelectric power.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Department of Natural Resources and Conservation be urged to enter into negotiations with the United States Bureau of Reclamation to determine the availability and cost of water stored behind Hungry Horse Dam for which the State of Montana might contract to support existing water use and future water development in the Clark Fork River basin.

BE IT FURTHER RESOLVED, that the Montana Department of Natural Resources and Conservation report to the Environmental Quality Council and the Clark Fork River basin task force the results of these negotiations prior to January 1, 2007.

Adopted March 8, 2005

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA'S CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION REQUIRING THE U.S. ARMY CORPS OF ENGINEERS TO INCREASE AND MAINTAIN A MINIMUM POOL ELEVATION IN FORT PECK RESERVOIR OF 2226 FEET ABOVE MEAN SEA LEVEL.

WHEREAS, due to management of downstream barge traffic by the U.S. Army Corps of Engineers, the water levels of Fort Peck Reservoir have reached historic lows; and

WHEREAS, the low water levels have had an adverse impact on recreational uses of Fort Peck Reservoir; and

WHEREAS, the declining water levels have had an adverse effect on fisheries management of Fort Peck Reservoir; and

WHEREAS, declining reservoir levels are affecting the availability of water for irrigation and other agricultural uses; and

WHEREAS, reduced reservoir levels have exposed thousands of acres of land, resulting in an accelerated spread of noxious weeds; and

WHEREAS, the reduced water levels have caused a severe economic impact on all of central and eastern Montana in that marinas have closed, most boat ramps no longer reach the water and are unusable, and recreational boaters have limited use of the reservoir, thereby causing an economic disaster to the service industries of central and eastern Montana that provide food, lodging, fuel, sporting goods, boats, and marinas; and

WHEREAS, studies have concluded that the economic value of barge traffic is approximately \$7 million annually, and the economic value of recreational uses of upstream dams is estimated to be \$85 million annually; and

WHEREAS, the drawdown of the reservoirs on the Missouri River will have an impact on the cost of electricity to customers that receive power from the Western Area Power Administration; and

WHEREAS, restoring the lake level to 2226 feet above mean sea level will restore most of the recreational uses and will still allow for future flood control.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be strongly urged to introduce and support legislation requiring the U.S. Army Corps of Engineers to increase and maintain a minimum pool elevation in Fort Peck Reservoir of 2226 feet above mean sea level.

Adopted March 10, 2005

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. DEPARTMENT OF AGRICULTURE TO REFER TO THE BEEF INDUSTRY IN THIS COUNTRY AS THE UNITED STATES BEEF INDUSTRY AND TO REFRAIN FROM REFERRING TO IT AS THE NORTH AMERICAN BEEF INDUSTRY.

WHEREAS, the U.S. Department of Agriculture refers to the beef industry in this country as the North American beef industry rather than the United States beef industry; and

WHEREAS, it is important that the United States beef industry maintain its identity, even as the marketplace becomes one of more global proportions; and

WHEREAS, because of the unique features of the Canadian and Mexican beef industries that allow them to complement the United States beef industry in a balanced trade relationship, it is more accurate and respectful to differentiate the United States beef industry from the beef industries of our neighbors to the north and south; and

WHEREAS, at a time when serious livestock diseases such as bovine spongiform encephalopathy (BSE) and tuberculosis affect this country's trading partners, United States consumers deserve to know that the laws their

producers observe and abide by are not diluted and that the integrity of the United States beef industry is being maintained.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Department of Agriculture be urged to refer to the beef industry in this country as the United States beef industry and to refrain from referring to it as the North American beef industry.

(2) That copies of this resolution be sent by the Secretary of State to the Secretary of the U.S. Department of Agriculture and to the members of the Montana Congressional Delegation.

Adopted March 21, 2005

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. DEPARTMENT OF AGRICULTURE TO LOCATE ITS RURAL DEVELOPMENT SATELLITE OFFICES IN RURAL MONTANA.

WHEREAS, many Montana U.S. Department of Agriculture regional rural development offices were recently moved from rural areas to larger cities in Montana; and

WHEREAS, office employees are now required to commute between their rural homes and larger cities; and

WHEREAS, USDA rural development satellite offices provide more accessible and appropriate services to rural northeastern Montanans when located in rural areas.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Department of Agriculture be urged to locate rural development satellite offices in the rural Montana communities where the offices used to be located.

(2) That the Secretary of State send copies of this resolution to the Secretary of the U.S. Department of Agriculture, to the members of the Montana Congressional Delegation, and to the director of the state USDA rural development main office in Bozeman.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REJECT THE UNITED STATES DEPARTMENT OF AGRICULTURE'S PROPOSAL TO RESUME LIVE CATTLE TRADE WITH CANADA UNTIL MONTANA PRODUCERS AND CONSUMERS CAN BE ASSURED THAT THE FOOD SUPPLY IS SAFE

FROM BOVINE SPONGIFORM ENCEPHALOPATHY (BSE) AND THAT
THE CATTLE INDUSTRY OF MONTANA WILL NOT BE HARMED.

WHEREAS, Montana's beef industry is a significant contributor to the state's agricultural economy and is vital to Montana's economy; and

WHEREAS, Montana relies on export markets in the Pacific Rim and other markets around the world; and

WHEREAS, the United States' export markets have declined more than \$2 billion since the first Canadian cow with bovine spongiform encephalopathy (BSE) was discovered in Washington state in 2003; and

WHEREAS, 70% of countries with a confirmed case of BSE have discovered additional infected animals after the initial outbreak; and

WHEREAS, Montana borders the province of Alberta, Canada, where all of the BSE-positive animals in North America have originated; and

WHEREAS, Montana provides a trucking corridor to the south for all Alberta feedlots; and

WHEREAS, 27,872 head of cattle, out of a national herd of approximately 6 million adult animals, or 0.46% of the national herd, have been tested for BSE in Canada compared to more than 199,166 in the United States, out of a national herd of approximately 80 million adult animals, or 0.24% of the national herd, despite the fact that all BSE-positive cases in North America have been discovered among the native Canadian herd; and

WHEREAS, Canada's meat and bone meal feed ban has not prevented several shipments of feed from being turned back by the Canadian government because of unknown animal parts, there are reports that 70% of tested feed samples in Canada contained unknown animal proteins, and the Canadian Food Inspection Agency confirmed that the original BSE-positive Canadian cow that was discovered in May 2003 was rendered into nonruminant animal feed and distributed to approximately 1,800 Canadian farms; and

WHEREAS, in early January 2005, Canada confirmed a third BSE-positive animal; and

WHEREAS, the United States Department of Agriculture has announced opening the border to imports of live Canadian cattle and further Canadian beef products.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be urged to reject the current proposal by the U.S. Department of Agriculture to reestablish live cattle trade with Canada until safeguards have been established and specific measures have been met to assure the producers and consumers in Montana that the cattle industry in Montana will not be placed in jeopardy.

BE IT FURTHER RESOLVED that international trade be reestablished with as many countries as possible that maintain their ban on United States beef and beef products, including our largest international customers, Japan and South Korea, prior to the United States border with Canada being opened.

BE IT FURTHER RESOLVED that the United States Congress be urged to ban all meat and feed imports from countries that have not implemented and successfully enforced a 100% compliance rate with a ruminant-to-ruminant feed ban.

BE IT FURTHER RESOLVED that the United States Department of Agriculture be urged to immediately finalize reasonable, cost-efficient, and workable rules to implement mandatory country of origin labeling before any live cattle or any additional Canadian beef product imports resume.

BE IT FURTHER RESOLVED that the Secretary of State send a copy of this resolution to the President of the United States, the United States Department of Agriculture, and the Montana Congressional Delegation.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO DEVELOP, CONSOLIDATE, AND UPDATE FIRE-RELATED STATUTES IN ORDER TO IMPROVE WILDLAND FIRE SUPPRESSION AND MITIGATION AND TO ADDRESS DANGEROUS ENVIRONMENTAL CONDITIONS ARISING FROM DROUGHT AND FOREST FUELS, AS WELL AS THE COMPLICATIONS AND COSTS OF FIGHTING FIRES IN WILDLAND/URBAN INTERFACES.

WHEREAS, wildfires impose a large recurrent financial, human resources, and natural resources cost on Montana; and

WHEREAS, Montana state agencies, as well as national and regional studies, commonly point to the high risk of wildfire posed by fuel accumulation; and

WHEREAS, movement into the wildland/urban interface has increased both the risk to inhabitants and the cost of fire suppression; and

WHEREAS, there is considerable sentiment among knowledgeable officials that Montana statutes are outdated or even silent on these important issues; and

WHEREAS, study is needed not only of these fire hazards but also of Montana's statutory response to these hazards, the use of local resources, and the funding of wildland fire protection and suppression costs; and

WHEREAS, a strong relationship between the federal, state, and local agencies is necessary, and the need to study their interrelationships and clarify how to enhance them is important.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to develop, consolidate, and update fire-related statutes, in collaboration with the Department of Natural Resources and Conservation, wildland fire service organizations, and any other organizations, to address dangerous environmental conditions and areas of wildland/urban interface, to improve wildland fire suppression and mitigation, and to recommend legislation to appropriately fund wildland fire protection and suppression costs.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted March 17, 2005

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING COOPERATION BETWEEN AND AMONG STATE AND FEDERAL AGRICULTURAL RESEARCH STATIONS AND TRIBAL AGRICULTURAL RESEARCH PROGRAMS TO FACILITATE ONGOING RESEARCH, SHARING OF RESEARCH SCIENTISTS, AND EDUCATIONAL EFFORTS IN ADDRESSING CRITICAL ISSUES CONCERNING DELETERIOUS INSECTS, PESTICIDE USE, LIVESTOCK DISEASE, NOXIOUS WEEDS, AND IRRIGATED AND DRYLAND CROPPING SYSTEMS; AND URGING SUBMISSION OF A REPORT TO THE LEGISLATURE REGARDING THE PROGRESS OF COOPERATIVE RESEARCH EFFORTS AND THE SHARING OF EDUCATIONAL INFORMATION BETWEEN THE STATE AND MONTANA TRIBES AND BETWEEN STATE AND FEDERAL AGRICULTURAL RESEARCH STATIONS.

WHEREAS, critical issues concerning deleterious insects, pesticide use, livestock disease, noxious weeds, and irrigated and dryland cropping systems affect all Montana agricultural interests, both tribal and nontribal; and

WHEREAS, the state through its University System agricultural research stations, Montana tribes through tribal agricultural research programs, and the U.S. Department of Agriculture through its agricultural research service programs seek to address these important agricultural issues; and

WHEREAS, cooperation between agricultural research stations at both the state and federal levels and between state, federal, and tribal entities regarding ongoing research, sharing of research scientists, and educational efforts would help provide a unified approach toward solving these critical issues and strengthen overall efforts on a statewide basis; and

WHEREAS, the agricultural research program at the Fort Belknap Reservation would provide a logical tribal vehicle for cooperation with state and pertinent federal research programs to study insects and pesticides, the agricultural research program at the Fort Peck Reservation would provide a logical tribal vehicle for cooperation with state and pertinent federal research programs to study livestock issues, and the agricultural research program at the Rocky Boy Reservation would provide a logical tribal vehicle for cooperation with state and pertinent federal research programs to study noxious weeds; and

WHEREAS, irrigated and dryland cropping system issues would be an appropriate research focus for cooperation between state and pertinent federal research programs and all tribal agricultural research programs; and

WHEREAS, sharing of research and information between state and federal agricultural research stations, particularly the U.S. Department of Agriculture agricultural research laboratories in Sidney and Miles City, would be beneficial to statewide efforts; and

WHEREAS, because a portion of both state and tribal agricultural research funding comes from federal sources, it is appropriate that the federal government be made aware of Montana's efforts to enhance cooperation between and among state and federal agricultural research stations and tribal agricultural research programs and that the Montana Congressional Delegation be encouraged to seek increased federal funding for all Montana agricultural research efforts, including funding for joint state, federal, and tribal partnerships that address Montana's water resources and irrigated and dryland cropping systems; and

WHEREAS, a report to the Montana Legislature regarding cooperative research efforts and the sharing of educational information between the state and Montana tribes and between state and federal agricultural research stations would help the Legislature identify areas of greatest immediate concern, and available funding sources to address those concerns, in a timely and cost-effective manner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana agricultural research stations, including federal agricultural research facilities in Sidney and Miles City, be encouraged to share research and information between stations in order to more effectively address agricultural issues of regional and statewide concern.

BE IT FURTHER RESOLVED, that the state agricultural research stations be encouraged to share ongoing research, research scientists, and educational efforts with tribal agricultural research programs in order to help provide a unified approach toward solving critical agricultural issues and strengthening efforts regarding deleterious insects, pesticide use, livestock disease, noxious weeds, and irrigated and dryland cropping systems on a statewide basis.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be urged to seek increased federal funding for all Montana agricultural research efforts, including funding for joint state, federal, and tribal partnerships that address Montana's water resources and irrigated and dryland cropping systems.

BE IT FURTHER RESOLVED, that Montana agricultural research stations, through the Montana University System, be encouraged to provide a systemwide report to the 60th Legislature regarding cooperative research efforts and the sharing of educational information between and among state and federal agricultural research stations and tribal agricultural research programs in order to help the Legislature identify areas of greatest immediate concern, examine available funding sources to address those concerns, and consider the potential for cooperative state, federal, and tribal agricultural research pilot programs.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the natural resource committee of each tribal government in Montana, to the director of each state and federal agricultural research station in Montana, to the Director of the Montana Department of Agriculture, to the

U.S. Secretary of Agriculture, and to the members of the Montana Congressional Delegation.

Adopted March 10, 2005

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE CONSTRUCTION OF ROUNDABOUTS INSTEAD OF RIGHT-ANGLE INTERSECTIONS.

WHEREAS, the Insurance Institute for Highway Safety reports that nationwide, fatal crashes at intersections increased 18% during the period between 1992 and 1998; and

WHEREAS, modern roundabouts are designed to control traffic flow at intersections without the use of stop signs or traffic signals; and

WHEREAS, in recent years, there has been growing interest in the potential benefits of roundabouts and an increase in construction of roundabouts; and

WHEREAS, although uncommon in Montana, other states and countries are constructing roundabouts as a safer alternative to intersections; and

WHEREAS, California, Colorado, Florida, Maine, Maryland, Michigan, Nevada, South Carolina, Vermont, and Washington are among the states that are constructing modern roundabouts; and

WHEREAS, the absence of right angles, combined with the necessary reduction in speed, makes roundabouts safer for pedestrians and bicyclists as well as for motorists; and

WHEREAS, an 8-state study of 24 intersections before and after construction of roundabouts found a 39% decrease in crashes and a 76% decrease in crashes that resulted in injury; and

WHEREAS, commercial motor vehicles contribute to the state's economy and the operation of commercial motor vehicles should be considered when roundabouts are designed; and

WHEREAS, the evidence is clear that constructing properly designed roundabouts instead of right-angle intersections in Montana would likely reduce the number of crashes and the number of injuries suffered by Montana motorists.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Transportation and cities and towns in their respective jurisdictions be encouraged to construct more roundabouts instead of signalized, right-angle intersections.

(2) That copies of this resolution be sent by the Secretary of State to the Governor, to the director of the Department of Transportation, and to the Montana League of Cities and Towns with the request that it be forwarded to each city or town public works department or similar entity involved in road design and construction.

Adopted April 5, 2005

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REPEAL THE FEDERAL LANDS RECREATION ENHANCEMENT ACT.

WHEREAS, H.R. 3283, the Federal Lands Recreation Enhancement Act, allows the federal land management agencies to charge access fees for recreational use of federally managed public lands by the general public; and

WHEREAS, Montana recently made access to its state parks and stream access locations easier for Montanans; and

WHEREAS, Montana's culture, quality of life, and traditions demand free access to public lands; and

WHEREAS, fees for access to public lands discriminate economically against those least able to pay the fees, especially citizens in low-income states, including Montana; and

WHEREAS, these public lands access fees have been highly controversial and are opposed by hundreds of organizations and county governments, by state legislatures, including the Montana Legislature, and by millions of rural Americans; and

WHEREAS, H.R. 3283 is substantive legislation, including criminal penalties, that fundamentally changes the way America's public lands are funded and managed; and

WHEREAS, federal policies regarding management of public lands have a profound impact on the well-being of the citizens of Montana and changes to them should be conducted in an open public forum; and

WHEREAS, H.R. 3283 was never approved by the U.S. House of Representatives and was never introduced, never had hearings, and was never approved by the U.S. Senate but was instead attached to an omnibus spending bill as an appropriations rider.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature demands that H.R. 3283 be repealed by the United States Congress.

(2) That copies of this resolution be sent to the Governor of Montana, Brian Schweitzer, to the President of the United States, to the Vice President of the United States, to the Speaker of the United States House of Representatives, to the majority and minority leadership of the United States Senate, to United States Senators Max Baucus, Conrad Burns, and Craig Thomas, to United States Representatives Denny Rehberg and Ralph Regula, and to the presiding officer of the Public Lands Committee in the United States House of Representatives.

Adopted March 14, 2005

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO REVIEW ISSUES RELATED TO SENTENCING PRACTICES AND THE DISPROPORTIONATE REPRESENTATION OF MINORITIES IN THE CRIMINAL JUSTICE AND CORRECTIONS SYSTEMS.

WHEREAS, Indians and other minorities in Montana are disproportionately overrepresented in the criminal justice system compared to their representation in the general population; and

WHEREAS, there are numerous points of discretion in the criminal justice and corrections system that need to be reviewed for causes behind racial disparity in sentencing, including quality of counsel, arrest rates, detention in jail versus release on bail, the various uses of plea agreements and trials, rates of conviction, sentencing patterns, opportunities for effective treatment, rates of incarceration, rates in receiving deferred or suspended sentences and in granting of parole, and differences in probation and parole revocations; and

WHEREAS, Indians represent over 7.5% of the overall population of Montana, yet Indian females represent 17% and Indian males represent 14.4% of the overall 2004 state adult offender population, including prison, intensive supervision parole, prerelease, and probation; and

WHEREAS, the numbers incarcerated in state prisons are even more disproportionate — 27.2% of incarcerated females and 16.8% of incarcerated males are Indian — and those rates have remained consistent for at least 20 years; and

WHEREAS, Indian youth are also disproportionately overrepresented in the Youth Court system, representing 12% to 18% of arrests, referrals to juvenile court, secure detention, petition filings, delinquent findings, probation placement, and secure confinement, and in the juvenile corrections systems, ranging from 20% at the Pine Hills Youth Correctional Facility for boys and up to 50% at the Riverside Youth Correctional Facility for girls; and

WHEREAS, two-thirds of Indians in Montana live on reservations under federal jurisdiction, and the Indian adults and youth who are in federal prisons or under federal supervision are not reflected in the state statistics, which further exacerbates and distorts the magnitude of the disproportionality.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the reasons, including quality of counsel, arrest rates, detention in jail versus release on bail, the various uses of plea agreements and trials, rates of conviction, sentencing patterns, opportunities for effective treatment, rates of incarceration, rates in receiving deferred or suspended sentences and in granting of parole, and differences in probation and parole revocations, why there is a disproportionate number of adult and youth minority persons in the criminal justice system in Montana.

BE IT FURTHER RESOLVED, that the committee make recommendations for the criminal justice and corrections systems and the Judiciary to alleviate any disparate treatment of minorities.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature, each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa, the Governor, the Montana Congressional Delegation, and the Bureau of Indian Affairs of the United States Department of the Interior.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR A PILOT-SCALE HYPERSONIC WIND TUNNEL IN BUTTE.

WHEREAS, the State of Montana would like to advance the MARIAH Hypersonic Wind Tunnel Program as an initiative having a statewide economic impact; and

WHEREAS, the current efforts related to the Magnetohydrodynamic Accelerated Research Into Advanced Hypersonics (MARIAH) hypersonic wind tunnel are led by Butte-based MSE Technology Applications, Inc., which coordinates a superb cast of team members, including Sandia National Laboratories, Lawrence Livermore National Laboratory, Oak Ridge National Laboratory, Princeton University, and AeroSystems Engineering, Inc.; and

WHEREAS, the current program is intended to develop a pilot-scale hypersonic wind tunnel in Butte at the Mike Mansfield Advanced Technology Center; and

WHEREAS, this pilot-scale hypersonic wind tunnel will be used to demonstrate the utility of a large-scale hypersonic wind tunnel, which must be built if the nation is to be competitive in hypersonic technology; and

WHEREAS, in all probability, the large-scale hypersonic wind tunnel will be built at a secure military installation; and

WHEREAS, Malmstrom Air Force Base is a secure military installation located in Montana and possesses the necessary infrastructure required for a large-scale wind tunnel; and

WHEREAS, the State of Montana, the Governor, the Department of Commerce, the Office of Economic Development, the Montana Aerospace Development Association, and MSE Technology Applications, Inc., wish to make every effort to ensure that the program, and the resultant jobs, are established and remain in Montana; and

WHEREAS, the large-scale wind tunnel will provide an initial economic investment of up to \$500 million; and

WHEREAS, the economic spinoff from this project will have tremendous benefit to the entire State of Montana; and

WHEREAS, the State of Montana, under the proactive leadership of the Governor and the Legislature, endeavors to become a leader among states in the field of high technology generally, and specifically in hypersonic flight technology; and

WHEREAS, the State of Montana recognizes the economic impact of Malmstrom Air Force Base and wishes to see Malmstrom continue to have a viable mission well into the future; and

WHEREAS, the MARIAH hypersonic wind tunnel will have a positive economic impact on the Montana University System and the communities associated with the University System; and

WHEREAS, aerospace and defense companies will most likely develop a physical and economic presence in Montana during construction and after completion of the large-scale wind tunnel; and

WHEREAS, the Congressional Delegation from Montana has been very supportive of the MARIAH Hypersonic Wind Tunnel Program; and

WHEREAS, the State of Montana recognizes the Montana Aerospace Development Association as a valuable resource in forming public/private partnerships to support the site for the large-scale wind tunnel.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana supports the efforts of MSE Technology Applications, Inc., to successfully complete the pilot-scale hypersonic wind tunnel in Butte.

BE IT FURTHER RESOLVED, that the State of Montana supports efforts to locate the large-scale wind tunnel in Montana.

BE IT FURTHER RESOLVED, that the State of Montana urges its Congressional Delegation to continue to support the development of the MARIAH Hypersonic Wind Tunnel Program in Montana.

Adopted March 19, 2005

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE BOARD OF PUBLIC EDUCATION TO CONSIDER THE BENEFITS OF INCREASING HEALTH ENHANCEMENT IN SCHOOLS AND ENCOURAGING SCHOOLS TO PROVIDE STUDENTS WITH MORE OPPORTUNITIES FOR PHYSICAL ACTIVITY.

WHEREAS, obesity in children is a national epidemic and can lead to chronic diseases, such as heart disease, stroke, and diabetes; and

WHEREAS, poor dietary habits and inactivity contribute to the increase of obesity in youth; and

WHEREAS, today's youth are considered the most inactive generation in history, caused in part by reductions in school physical education programs; and

WHEREAS, nearly half of all high school students are not even enrolled in a physical education class, and only 29% of all high school students and 23% of all 7th and 8th grade students attend daily physical education classes; and

WHEREAS, 18% of Montana high school students are overweight or at risk of becoming overweight; and

WHEREAS, Montana high school and junior high school students are required to take only two half-year classes of health enhancement, including physical education; and

WHEREAS, health enhancement is part of the Montana accreditation standards upon which a quality education is built; and

WHEREAS, participation in physical activity and sports can promote social well-being, as well as physical and mental health, among young people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature encourage the Board of Public Education to consider additional health enhancement for all school students.

BE IT FURTHER RESOLVED, that the Montana Legislature encourage local schools to provide greater opportunities for students to participate in physical activities and sports programs, including intramural programs.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Board of Public Education and to the Superintendent of Public Instruction for distribution to every school district in Montana.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ADOPT LEGISLATION THAT WOULD REQUIRE THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT TO NOT ARBITRARILY CLOSE ROADS AND ACCESS TO MONTANA'S PUBLIC LANDS.

WHEREAS, Montana families live in Montana for its rich recreational opportunities and quality of life; and

WHEREAS, Montana's public lands are to be administered under the concept of multiple use; and

WHEREAS, Americans, especially those who are elderly, disabled, or physically challenged, cannot fully enjoy their public lands if roads and access to trails and streams are arbitrarily closed; and

WHEREAS, across Montana and the intermountain West, the United States Forest Service should manage lands for multiple-use opportunities; and

WHEREAS, roads are a critical component in the use of public lands for recreational and agricultural activities; and

WHEREAS, the United States Forest Service should be administering our public lands for the greatest good for the greatest number; and

WHEREAS, groups using public lands could volunteer to maintain critical points of access.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be urged to adopt legislation that would require the United States Forest Service and the Bureau of Land Management to not arbitrarily close roads and access to Montana's public lands and to require instead that these agencies be properly funded and maintain the current means of access to and on Montana's public lands, trails, and streams.

Adopted March 17, 2005

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE AMERICAN LEGION TO ADOPT A WOOD BAT ONLY RULE FOR AMERICAN LEGION BASEBALL.

WHEREAS, Brandon Patch, a citizen of the State of Montana, subject to the state's laws and deserving of its care and protection, and a proud member of the Miles City American Legion Baseball team the Mavericks, was killed by a batted ball from a nonwood bat in a baseball game in 2003; and

WHEREAS, 15 players have been killed by batted baseballs from bats determined to be nonwood aluminum, composite, or "unknown" substances during a 10-year period, according to an examination conducted by the U.S. Consumer Product Safety Commission; and

WHEREAS, nonwood bats when used by young men and mature men may be able to propel a baseball off the bat at a rate of speed that may exceed human reaction time for pitchers and infielders; and

WHEREAS, since its inception until the invention of nonwood bats in the 1970s, baseball had been played with a wood bat; and

WHEREAS, Major League Baseball is played exclusively with wood bats; and

WHEREAS, although nationwide responsible baseball organizations and governmental bodies have not yet conclusively proved that nonwood bats increase the velocity of batted balls beyond the ability of defensive players to react to them, there is at least anecdotal evidence, including the death of Brandon Patch, that the use of nonwood bats places our children, particularly those of high school age, in an unacceptable risk of injury; and

WHEREAS, the State of Montana's American Legion may and should adopt a wood bats only rule; and

WHEREAS, the State of Montana's American Legion may and should petition the National American Legion to amend its rules to adopt a wood bats only rule; and

WHEREAS, the National American Legion organization may and should alter its rules to adopt a wood bats only rule.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana's American Legion be strongly urged to adopt a rule for all American Legion games within the State of Montana allowing only wood bats to be used and to petition the National American Legion to adopt a rule for all American Legion games allowing only wood bats to be used.

BE IT FURTHER RESOLVED, that the National American Legion be strongly urged to adopt a rule for all American Legion games allowing only wood bats to be used.

Adopted April 14, 2005

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES SECRETARY OF AGRICULTURE AND THE UNITED STATES SECRETARY OF THE INTERIOR TO DIRECT THE APPROPRIATE FEDERAL AGENCIES TO EXPEDITE THE ELIMINATION OF BRUCELLOSIS IN THE GREATER YELLOWSTONE AREA BISON AND ELK HERDS, AND IN THEIR ENVIRONMENT, AND URGING THE PRESIDENT OF THE UNITED STATES TO NAME THE UNITED STATES DEPARTMENT OF AGRICULTURE AS THE LEAD AGENCY IN AN ELIMINATION PLAN.

WHEREAS, an essential element of proper wildlife management is the maintenance of healthy animal populations; and

WHEREAS, the disease brucellosis, and the causative organism *Brucella abortus*, has been known to be present in the Yellowstone National Park bison herd for over 87 years; and

WHEREAS, the bison population of Yellowstone National Park is now nearly 4,500 bison, well over the population target of 3,000 bison; and

WHEREAS, in the 2000 final environmental impact statement for the interagency bison management plan for the State of Montana and Yellowstone National Park, one of the objectives was to commit to the eventual elimination of brucellosis in bison and other wildlife; and

WHEREAS, the State of Montana, the U.S. Department of Agriculture, and the U.S. Department of the Interior agreed in a 1995 memorandum of understanding that an objective was to plan for the elimination of brucellosis from the greater Yellowstone area by the year 2010; and

WHEREAS, cattle herds in Idaho and Wyoming have been infected with brucellosis by elk in the greater Yellowstone area, resulting in significant economic loss to local economies; and

WHEREAS, Yellowstone National Park bison that have been infected with or exposed to brucellosis and greater Yellowstone area elk that may have been infected with or exposed to brucellosis frequently make nomadic or migratory movements into Montana, threatening the health of Montana citizens as well as the state's livestock industry and brucellosis class-free status; and

WHEREAS, for years, Montana has been forced to react to the nomadic movements of bison from Yellowstone National Park into Montana with costly management measures, including hazing, capturing, and lethally removing

bison, to protect the health and welfare of Montana citizens and the livestock industry; and

WHEREAS, elimination of brucellosis in the greater Yellowstone area bison and elk herds, and in their environment, would mitigate a public health and animal health concern and reduce ongoing state expenses related to the nomadic movement of bison from Yellowstone National Park; and

WHEREAS, a brucellosis vaccination program for bison is being developed and should be implemented in the Yellowstone National Park wild bison herd as soon as possible as a critical component of any ongoing eradication strategy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the U.S. Secretary of Agriculture and the U.S. Secretary of the Interior be urged to direct the U.S. Department of Agriculture's Animal and Plant Health Inspection Service Veterinary Services Office, the National Park Service, and any other affected federal agencies to undertake the expeditious elimination of brucellosis in the greater Yellowstone area bison and elk herds, and in their environment, by developing and implementing a brucellosis elimination program, and that the President of the United States be urged to name the United States Department of Agriculture as the lead federal agency for the development of an elimination plan.

BE IT FURTHER RESOLVED, that any federal brucellosis elimination program be developed in coordination with Montana state veterinarians and the Montana Department of Livestock to ensure that state and federal programs continue to protect the health and welfare of Montana citizens, Montana wildlife, and the Montana livestock industry.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the members of the Montana Congressional Delegation, the President of the United States, the U.S. Secretary of Agriculture, the U.S. Secretary of the Interior, and the Director of the National Park Service.

Adopted March 10, 2005

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE BICENTENNIAL OF THE LEWIS AND CLARK EXPEDITION IN MONTANA.

WHEREAS, on May 14, 1804, the Corps of Discovery, led by Captains Meriwether Lewis and William Clark, left St. Louis and traveled up the Missouri River, journeyed to its headwaters, and then followed the Columbia River to the Pacific Ocean; and

WHEREAS, Lewis and Clark entered the area currently known as Montana in the springtime of 1805 and traveled more miles in Montana than in any other present state; and

WHEREAS, Lewis and Clark used the Missouri River as a major thoroughfare for their journey through the wild lands of Montana, encountering the Great Falls of the Missouri on June 13, 1805, encountering the Gates of the Mountains on June 19, 1805, when the expedition reached the foothills of the

Rocky Mountains, and finding the headwaters of the Missouri River on July 25, 1805; and

WHEREAS, Lewis and Clark encountered the Salish and Kootenai nations who assisted them in traveling across the most difficult overland segment of their expedition, namely over present-day Lolo Pass and near the area now known as the Great Burn; and

WHEREAS, in July 1806, Corps of Discovery member Sergeant Nathaniel Pryor traversed an area of the Crow Indian nation, now named in his honor as the Pryor Mountains, on the eastward segment of the expedition, a remote area that ranges from high plateaus to desert limestone canyons; and

WHEREAS, Captain Lewis and his return party, traveling east, followed the Blackfoot River and Alice Creek, reaching the Continental Divide, and the expedition reached the location currently known as the Lewis and Clark Pass on July 7, 1806; and

WHEREAS, Lewis and Clark encountered fish and wildlife in abundance during their journey and subsisted on fish and game just as modern-day anglers and hunters currently do, treasuring Montana's trout streams, deer and elk herds, and many other opportunities to enjoy the outdoors; and

WHEREAS, in the span of 200 years since the Lewis and Clark expedition, the Missouri River has been dammed and transformed into a series of slackwater impoundments or, in many places, narrow, fast-flowing channels, and management of this river significantly impacts the continuance of agriculture, fisheries, wildlife, and recreational opportunities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives:

(1) applaud the extraordinary journey conceived by President Thomas Jefferson and carried out by Captains Lewis and Clark and the Corps of Discovery;

(2) recognize the enormous contribution of the American Indian nations to the success of this journey;

(3) support efforts to conserve the Missouri River through science-based management of its annual water fluctuations and maintenance of its fisheries and wildlife populations;

(4) support the conservation of our natural heritage as a commemoration of the spirit of the Corps of Discovery; and

(5) support Montana's efforts to encourage all Americans to visit, to appreciate, and to develop a sense of the importance of protecting this natural legacy for future generations.

Adopted March 10, 2005

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE HISTORY AND TRENDS OF THE STATE'S RELIANCE ON AND USE OF FEDERAL FUNDS, OF THE HISTORY,

TRENDS, AND PORTENTS OF FEDERAL BUDGET DEFICITS, PARTICULARLY AS TO HOW FEDERAL BUDGET DEFICITS HAVE AFFECTED AND MAY IN THE FUTURE AFFECT THE AVAILABILITY OF FEDERAL REVENUE FOR STATE-ADMINISTERED PROGRAMS, AND OF OPTIONS AVAILABLE TO THE LEGISLATURE FOR DEALING WITH REDUCTIONS IN THE AVAILABILITY OF FEDERAL FUNDS FOR PROGRAMS ADMINISTERED BY THE STATE.

WHEREAS, the budget deficit for the federal government for fiscal year 2005 is currently estimated by the Congressional Budget Office to be \$368 billion, excluding the additional \$80 billion requested in January for the cost of the war in Afghanistan and Iraq this year; and

WHEREAS, according to the Congressional Budget Office, the national debt at the end of 2004 stood at \$7.355 trillion and is projected to be \$7.975 trillion by the end of this year; and

WHEREAS, according to the Congressional Budget Office, budget deficits for the federal government may increase over the next 5 years; and

WHEREAS, the United States Congress has in recent years reduced direct funding and matching grants available to Montana and other states; and

WHEREAS, the proportion of the budget of the State of Montana paid for by federal dollars is currently 47%; and

WHEREAS, decreases in federal funding that supports state programs will not only challenge the state budget, but will also adversely affect local governments and tribal governments and the citizens whom they serve.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) examine and analyze the history and trends of the state's reliance on the use of federal funds in programs administered by the state or jointly by the state and local governments;

(2) examine and analyze:

(a) the potentially dramatic increases in future federal budget deficits and, by default, the national debt;

(b) the probability that increases in federal budget deficits will result in substantial and permanent decreases in federal funding for state-administered programs; and

(c) the possible nature and scope of impacts to state-administered programs, including programs that affect local governments and tribal governments, that may be inferred from potential decreases in federal funding; and

(3) identify policy options available to future Legislatures to prepare for and address reductions in federal funding for state-administered programs.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate interim committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CLARIFYING TO APPROPRIATE FEDERAL GOVERNMENT OFFICIALS THAT MONTANA RESERVES ITS APPLICABLE RIGHTS AND REMEDIES TO REQUEST FEDERAL PREDATOR CONTROL AND TO EXERCISE RIGHTS AND REMEDIES TO PREVENT AND CONTROL DAMAGE OR CONFLICT ON FEDERAL, STATE, OR OTHER PUBLIC OR PRIVATE LAND CAUSED BY PREDATORY ANIMALS, AND URGING THE MONTANA CONGRESSIONAL DELEGATION TO TAKE APPROPRIATE MEASURES TO OBTAIN MEANINGFUL FUNDING AND ASSISTANCE FOR MONTANA CITIZENS AND COMMUNITIES THAT HAVE BEEN ADVERSELY AFFECTED BY FEDERAL WOLF REINTRODUCTION.

WHEREAS, Article II, section 3, of the Montana Constitution provides all persons with the inalienable right to enjoy and defend their lives and liberties, to acquire, possess, and protect property, and to seek their safety, health, and happiness in all lawful ways; and

WHEREAS, the 2001 Montana Legislature enacted section 87-5-131, MCA, to provide for state delisting of the gray wolf upon federal delisting and to provide a plan to manage the wolf as a species in need of management until the Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal; and

WHEREAS, the 2003 Montana Legislature enacted section 87-1-217, MCA, requiring the Department of Fish, Wildlife, and Parks to manage large predators, including wolves, with the primary goals to

preserve citizens' opportunities to hunt large game species, to protect humans, livestock, and pets, and to preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

WHEREAS, the 2003 Montana Legislature adopted Senate Joint Resolution No. 4, requesting delisting of the wolf pursuant to the federal Endangered Species Act of 1973, requesting that Congress establish and fund the Northern Rocky Mountain Grizzly Bear and Gray Wolf National Management Trust, requesting that wolf population management methods include nonlethal and lethal methods, encouraging the Fish, Wildlife, and Parks Commission to reclassify the gray wolf when regulation of the wolf population is needed, and requesting the Department of Fish, Wildlife, and Parks or the Department of Livestock to address livestock depredations expeditiously; and

WHEREAS, the 2003 Montana Legislature passed House Bill No. 283 (chapter 530, Laws of 2003), directing the Attorney General to prepare a proactive opinion of state options regarding delisting and possible litigation scenarios related to recovery of damages and costs associated with wolf reintroduction in Montana; and

WHEREAS, uncontrolled wolf populations and extraordinarily high wolf densities continue to cause damage to Montana's economy, customs, culture, public safety, and public health despite the state's ongoing efforts to conform to federal requirements regarding wolf management plans and the state's regular requests for wolf delisting and despite the declared intent of Congress in 1988 "not to hurt hunting, not to hurt the local economies"; and

WHEREAS, wolves are predators and should be managed as predators; and

WHEREAS, high wolf population densities resulting from reintroduction are proof of the failure of the U.S. Fish and Wildlife Service to abide by the law and its own regulations; and

WHEREAS, the U.S. Congress has yet to address its restitution responsibilities under the Fifth Amendment to the U.S. Constitution for damage to private property, livestock, domestic animals, and Montana wildlife that has resulted from the unnatural and accelerated reintroduction of wolves; and

WHEREAS, designation of the wolf as a game animal under the Montana management plan will not supersede or undermine current federal or state law allowing management of wolves for depredation and Montana would be better served by a state management plan that allows the controlled taking of wolves following delisting; and

WHEREAS, recent adoption of the final 10(j) Rule under the Endangered Species Act allowed Montana landowners to take additional steps to protect livestock and dogs from attacks by wolves on private land and allowed grazing permittees and guiding and outfitting permittees to take wolves attacking livestock or domestic animals herding and guarding livestock on public lands; and

WHEREAS, a recent U.S. District Court decision in Oregon held that the U.S. Fish and Wildlife Service violated the Endangered Species Act by changing the status of the gray wolf from "endangered" to "threatened" in some regions, relaxing protection on many of the nation's gray wolves and effectively disallowing the shooting of wolves that are not part of the reintroduced experimental populations but that are attacking livestock; and

WHEREAS, the court decision irreparably harmed the good faith efforts between state and federal agencies to move expeditiously toward delisting the gray wolf and raised the prospect of endless third-party lawsuits that will obstruct and delay the delisting process; and

WHEREAS, federal, state, and local governments have a constitutional duty and fiduciary responsibility to provide all available remedies to protect the economy, customs, culture, public safety, and public health of the citizenry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana reserves its rights and remedies available by order of the U.S. Secretary of Agriculture to provide funding under the federal Granger-Thye Act for predator control pursuant to Title 7 of the U.S. Code and recognizes that an injunction sought in a court of law cannot divest the State of Montana of those rights and remedies.

BE IT FURTHER RESOLVED, that the State of Montana reserves its rights and remedies available through the U.S. Secretary of the Interior pursuant to Section 11(h) of the Endangered Species Act to order predator control in defense

of game herds and recognizes that an injunction sought in a court of law cannot divest the State of Montana of those rights and remedies.

BE IT FURTHER RESOLVED, that the State of Montana reserves its rights and remedies to prevent and control damages or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, and birds that are injurious to livestock, agriculture, horticulture, forestry, wildlife, and human safety and health, including threatened or endangered wildlife within Montana, as established by federal or state law or regulation or by county resolution.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation is urged to recognize the statutory concessions made by the State of Montana and is urged to obtain meaningful and substantive funding for the impacts from the federal wolf reintroduction program that was forcibly established in Montana, including emergency federal assistance for those Montana communities that bear the disproportionate burden of the impacts from the federal wolf reintroduction program.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation is urged to review documents published from 1988 through November 22, 1994, that preceded accelerated wolf reintroduction in order to verify that the federal government never intended for high wolf population densities to result in damage to Montana citizens or to strip citizens of their legal rights.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation is urged to respond to this unintended collateral damage to Montana citizens by seeking restitution under the Fifth Amendment to the U.S. Constitution for Montana citizens who have been damaged by the introduction of wolves into Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the U.S. Secretary of Agriculture, the U.S. Secretary of the Interior, members of the Montana Congressional Delegation, and all other members of the U.S. Senate and House of Representatives.

Adopted March 14, 2005

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO REVIEW THE PROGRAMS AND STATUTES OF VARIOUS STATES IN CREATING HUNTING LICENSE PREFERENCES FOR LANDOWNERS, WITH THE GOAL OF CREATING HUNTING LICENSE PREFERENCES FOR LANDOWNERS WHO PRACTICE SOUND WILDLIFE MANAGEMENT PRINCIPLES.

WHEREAS, previous sessions of the Legislature have enacted a number of laws providing preference to landowners in obtaining hunting licenses, which laws are codified in sections 87-1-266(2) and (3), 87-1-301(5)(b), 87-2-501(3) through (5), 87-2-511(1), 87-2-512(1)(e), 87-2-513, 87-2-520, and 87-2-705, MCA; and

WHEREAS, the Fish, Wildlife, and Parks Commission and the Department of Fish, Wildlife, and Parks have adopted rules and regulations in administering those statutes; and

WHEREAS, the adopted rules and regulations reflect preferences to meet individual situations and conditions; and

WHEREAS, there has been no comprehensive study of these preferences to determine if they are effective in recognizing the contributions of landowners in maintaining healthy wildlife populations and if they are consistent with sound wildlife management principles.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate existing statutes that grant a landowner preference in obtaining a big game hunting license or licenses or permit or permits or in sponsoring another person to receive a big game license or permit;

(2) compare the system in Montana for granting those licenses with the statutes, preferences, and administrative rules for similar licenses in other states surrounding Montana; and

(3) assess the impact of granting such licenses on the various wildlife populations and on public-hunting opportunities for both residents and nonresidents.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted March 23, 2005

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REVIEW ITS RULES GOVERNING SUBMISSION OF PROVIDER CLAIMS, POSTPAYMENT AUDITS, AND RECOUPMENT OF OVERPAYMENTS AND AMEND THOSE RULES, IF NECESSARY, IN ORDER TO GIVE PREDICTABILITY AND FINALITY TO THE MEDICAID PAYMENT PROCESS FOR CERTAIN PROVIDERS.

WHEREAS, the Department of Public Health and Human Services administers the Montana Medicaid program in conjunction with the federal government; and

WHEREAS, durable medical equipment providers (providers) deliver prosthetics and other medical equipment to Medicaid recipients; and

WHEREAS, the providers submit invoices to the Department for payment, and the Department reimburses the providers with state and federal money; and

WHEREAS, the Department reimburses providers within 30 days of receiving a "clean" claim, or as quickly as possible, to comply with its own rules and federal regulations; and

WHEREAS, the Department conducts postpayment audits of provider claims to be sure that all supporting documentation is in compliance with state rules and federal regulations; and

WHEREAS, situations sometimes arise in which audits reveal errors in a claim that has already been paid, consisting of errors in the documentation supporting a claim, for which the Department then seeks repayment from the provider because of the error; and

WHEREAS, the provider is responsible for the error, even if the error was on the part of the Department in paying the claim in the first place; and

WHEREAS, sometimes the repayment sought by the Department from the provider is beyond the ability of the provider to repay because of the provider's cash flow situation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services review its administrative rules and procedures, for possible revisions to those rules and procedures, in order to address the issue of overpayments associated with Department or provider errors, made in the process of paying claims, that are discovered in the audit process, in order to give greater certainty and predictability to providers in the payment process.

BE IT FURTHER RESOLVED, that the Department be requested to report its findings and any intended changes to administrative rules and procedures to the Children, Families, Health, and Human Services Interim Committee.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Governor and to the Director of the Department of Public Health and Human Services.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF ISSUES RELATED TO CONTRACT HARVESTING OF TIMBER FROM SCHOOL TRUST LANDS.

WHEREAS, the Montana Constitution requires that school trust lands be managed for the support and benefit of various state educational institutions; and

WHEREAS, the Department of Natural Resources and Conservation estimates that authorizing the department to sell logs directly from state lands

could increase funding available for trust beneficiaries by as much as 30% over the current method of timber sales; and

WHEREAS, the Washington Department of Natural Resources manages a program that allows contract harvesting on state lands for up to 10% of the total annual volume of timber offered for sale; and

WHEREAS, legislation that would have authorized a similar program in Montana passed the Senate by a 48-2 vote.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine issues surrounding the possible implementation of a contract harvesting program for state lands in Montana, including but not limited to an examination of similar programs in other states, standards for log quality, accounting practices, standards for hiring loggers, stewardship contracting, revenue and expenses, and economic impacts to the logging industry.

BE IT FURTHER RESOLVED, that participants in the study include representatives of the Department of Natural Resources and Conservation, beneficiaries of trust lands, the Montana Logging Association, the Montana Wood Products Association, and the conservation community.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY ALL OF THE SUPERFUND SITES IN MONTANA AND TO STUDY THE IMPACTS OF SUPERFUND SITES ON COMMUNITIES DIRECTLY IMPACTED BY A SUPERFUND SITE.

WHEREAS, there are several communities around Montana that are affected by state and federal superfund sites; and

WHEREAS, it is in the best interest of the state and the communities to identify the unique issues and needs within these communities; and

WHEREAS, communities are directly affected by cleanup activities and the timeliness and completeness of these cleanup activities; and

WHEREAS, communities must live with problems associated with superfund sites and the effects on the communities' infrastructure, economy, and social well being; and

WHEREAS, a less than timely response to superfund-related concerns by those responsible for cleanup activities has a direct and immediate and often costly effect on the communities and their abilities to provide basic services for their citizens; and

WHEREAS, it is of great importance to provide options and assistance from programs, whether state or federal, to mitigate the economic, environmental, or social effects of the superfund designation within the communities of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

- (1) establish a comprehensive list of:
 - (a) the superfund sites located in Montana, including the date on which the site was listed, on the state or federal superfund list, a site description, the history, and contaminants associated with the site;
 - (b) the current status of cleanup efforts, what cleanup milestones have been reached, and how much liquid and solid-based media have been treated;
 - (c) the decision documents describing the chosen remedy for site remediation for each site in Montana; and
 - (d) the proposed timeframe for completing the cleanup efforts;
- (2) identify alternatives that are available to communities when cleanup efforts are not timely and are having a direct impact on the community, including monetary, economic, and social impacts;
- (3) provide a detailed summary of water, infrastructure, and economic development needs of the communities that are a direct or indirect result of the superfund listing or the presence of contaminants that resulted in the superfund listing;
- (4) identify alternatives for education of citizens of the communities directly affected by the superfund listing as well as alternatives for providing education to citizens across Montana on the impacts of a superfund site to local communities and the state; and
- (5) develop a process to improve communication between local, state, and federal governments when addressing superfund issues.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 16, 2005

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LAWS AND FUNDING RELATED TO THE RESOURCE INDEMNITY TRUST.

WHEREAS, Article IX, section 2, of the Montana Constitution establishes a resource indemnity trust to be funded by taxes on the extraction of natural resources as the Legislature may from time to time impose for that purpose and the principal of the resource indemnity trust must forever remain inviolate in an amount of \$100 million guaranteed by the state against loss or diversion; and

WHEREAS, in February 2002, the trust exceeded the \$100 million threshold; and

WHEREAS, the resource indemnity trust interest, the resource indemnity and ground water assessment tax, the metalliferous mines license tax, and applicable portions of the oil and natural gas production tax will provide \$26.6 million over the 2007 biennium to local governments, two universities, and four state agencies; and

WHEREAS, there is no centralized legislative oversight of the accounts when appropriations are made, the appropriations are made in three subcommittees, and other proposed legislation affecting the resource indemnity trust may not be considered by any subcommittee; and

WHEREAS, this lack of general appropriations oversight of these related accounts puts at risk the stability of the funds; and

WHEREAS, laws regarding the flow of funding from the trust, taxes, and assessments are confusing and conflicting; and

WHEREAS, the historic use of some funds has not met statutory requirements; and

WHEREAS, there is no formal plan to address revenue shortfalls in the interim.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee be requested to direct sufficient staff resources to study laws related to the resource indemnity trust.

BE IT FURTHER RESOLVED, that the study:

- (1) propose revisions to laws related to the resource indemnity trust;
- (2) include input from the director of the Office of Budget and Program Planning and the directors of state agencies that would be affected by changes to the resource indemnity trust;
- (3) examine funding priorities; and
- (4) examine possible uses of funds related to the resource indemnity trust.

BE IT FURTHER RESOLVED, that any findings or conclusions be presented to and reviewed by the Legislative Finance Committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE THE SPECIAL CHALLENGES AND OPPORTUNITIES FACING MONTANA INDIAN TRIBES AND THEIR RESPECTIVE TRIBAL LANDS OR RESERVATIONS, WHICH INCLUDE THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION, THE ASSINIBOINE AND GROS VENTRE TRIBES OF THE FORT BELKNAP INDIAN RESERVATION, THE CHIPPEWA AND CREE TRIBES OF THE ROCKY BOY INDIAN RESERVATION, THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, THE CROW TRIBE OF THE CROW INDIAN RESERVATION, THE NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION, AND THE LITTLE SHELL BAND OF THE CHIPPEWA INDIANS, AND THE STATE OF MONTANA WITH RESPECT TO ECONOMIC DEVELOPMENT, TO EXAMINE ALL FACTORS IMPACTING ECONOMIC GROWTH, INCLUDING BUT NOT LIMITED TO TRIBAL HUMAN AND NATURAL RESOURCE DEVELOPMENT, AND TO PROVIDE A BASIS FOR IMPROVING THE ECONOMIC STATE OF INDIAN COUNTRY AND, BY EXTENSION, ALL OF MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 60TH LEGISLATURE IN THE FORM OF COMPREHENSIVE POLICY ANALYSES AND RECOMMENDATIONS.

WHEREAS, it is the mission of the Montana Legislative Indian Caucus to act as a resource regarding Montana Indian issues affecting state legislative action and to do so on behalf of all political parties; and

WHEREAS, the State of Montana recognizes tribal sovereignty through government-to-government relationships; and

WHEREAS, the American Indian tribes within the state of Montana are a unique and integral part of the history and future of Montana; and

WHEREAS, American Indian contributions to the economic structure of the State of Montana have never been fully studied with consideration given to all sources of tribal and individual Indian income, including natural resource ownership, utilization, and development; and

WHEREAS, state programs that involve tribal participation have not been consistently studied to understand the truly reciprocal character of economic development between Indian Country and the State of Montana; and

WHEREAS, conducting research to qualify and quantify Montana's American Indian and individual tribal economic resources and identify their impact is vital to state economic growth; and

WHEREAS, assisting tribal economies in concert with assistance to other economic development goals of the state will provide improved education and employment opportunities for all Montanans; and

WHEREAS, the Constitution of the State of Montana provides that all Montanans share in the responsibility for learning about and preserving the tribal cultures of Montana's American Indians.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or committees, pursuant to section 5-5-217, MCA, and direct sufficient staff resources to conduct a comprehensive study of tribal economic resources in the State of Montana, including human and educational resources, land and natural resource ownership, and the ability of tribal governments to generate revenue.

BE IT FURTHER RESOLVED, that all findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT A LEGISLATIVE STUDY BE CONDUCTED ON HOW PUBLIC EMPLOYEE RETIREMENT FUNDS ARE INVESTED AND HOW INVESTMENT PERFORMANCE, RETIREMENT PLAN BENEFITS, AND LEGISLATIVE POLICY DECISIONS INTERACT TO AFFECT THE ACTUARIAL SOUNDNESS OF THE PUBLIC EMPLOYEE RETIREMENT PLANS AND EMPLOYER'S FUNDING OBLIGATIONS.

WHEREAS, a significant decline in the market value of public retirement plan investments from fiscal year 2000 through fiscal year 2003 resulted in actuarial losses to the public retirement plans totaling more than \$1.3 billion; and

WHEREAS, as a consequence of these actuarial losses, the amortization schedules for paying off unfunded liabilities in the teachers', public employees', sheriffs', and game wardens' and peace officers' retirement systems had to be extended to well beyond 30 years; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that the public retirement systems be funded on an actuarially sound basis; and

WHEREAS, the Legislature has interpreted "actuarially sound basis" to mean having an amortization period of 30 years or less;

WHEREAS, the retirement boards requested legislation to increase employer contributions to the public employee retirement plans until funding was adequate to reduce the amortization schedules to under 30 years; and

WHEREAS, the employer contribution rate increases will require the Legislature to appropriate a total of nearly \$6.7 million in general fund money for state employer contributions during this biennium; and

WHEREAS, in each subsequent biennium, these employer contribution rate increases and the expected growth in the public employee payroll will increase general fund obligations each biennium until the retirement systems are sound; and

WHEREAS, local government and school district employer contribution rate increases will require local governments and school districts to contribute an additional \$20 million during the next biennium with that amount increasing as salaries increase each biennium until the retirement systems are sound; and

WHEREAS, between 58% and 75% of the funding for the public employee retirement plans comes from investment earnings, while only 12% to 20% of the funding comes from employer contributions; and

WHEREAS, public retirement plan funds are invested by the state Board of Investments and constitute nearly \$6 billion or 62% of all investments managed by the Board of Investments; and

WHEREAS, the Legislature is responsible for oversight of the public employee retirement plans and should consider how investment strategies, retirement benefits, and legislative policy decisions interact to affect employer funding obligations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

- (1) review constitutional and statutory language governing how public employee retirement plan funds are managed and invested;
- (2) study the investment strategies, objectives, and asset allocation of public employee retirement funds managed by the Board of Investments;
- (3) compare the asset allocation, investment performance, and actuarial assumptions regarding Montana's public employee retirement plan funds with asset allocation, investment performance, and actuarial assumptions used in other states;
- (4) study how investments or asset allocation strategies are adjusted by the Board of Investments either in anticipation of changing needs or changing market conditions or after significant national and world events affect the market;
- (5) study actual rates of return versus actuarial gains and losses in market value and how actuarially assumed rates of return adopted by the retirement boards relate to realized returns and the investment objectives set by the Board of Investments;
- (6) examine how investments, retirement benefits, and legislative policy decisions interact to affect the actuarial soundness of the public employee retirement plans and employer funding obligations; and

(7) identify legislative policy issues and concerns, consider options, and develop recommendations.

BE IT FURTHER RESOLVED, that the Legislative Services Division explore whether technical assistance is available and can be provided to assist in conducting this study.

BE IT FURTHER RESOLVED, that if the study is assigned to an interim committee, the committee be staffed by the Legislative Services Division and, if appropriate and by request, that the interim committee also receive staff assistance from the Legislative Fiscal Division and the Legislative Audit Division.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CLASSIFICATION, VALUATION, AND TAXATION OF AGRICULTURAL LAND.

WHEREAS, the Montana Constitution requires the equalization of valuation of all property subject to taxation; and

WHEREAS, agricultural land is classified for property tax purposes according to its use that includes irrigated use, nonirrigated use, and grazing use and is further subclassified by production categories; and

WHEREAS, agricultural land is taxed based on its productive capacity; and

WHEREAS, the several classification categories and other determinants of value may result in anomalies in the equalization of value of agricultural land; and

WHEREAS, the current classification and valuation methods applied to agricultural land may be outdated and unfair; and

WHEREAS, the Department of Revenue requested legislation to revise the valuation of agricultural land; and

WHEREAS, the proposed legislation did not adequately deal with the many problems associated with the valuation of agricultural land.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff

resources to examine the current methods used for the classification and valuation of agricultural land for property tax purposes and to examine alternative methods of classification and valuation.

BE IT FURTHER RESOLVED, that participants in the study include representatives of the Department of Revenue, the Department of Agriculture, and persons and organizations knowledgeable in agriculture and agricultural economics.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded before September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PROPERTY TAXATION OF OIL AND NATURAL GAS PROPERTY.

WHEREAS, oil and natural gas production machinery and equipment, gathering lines, and transmission lines make up a significant portion of the property tax base of many taxing units across the state; and

WHEREAS, oil and natural gas property that is located in more than one county is centrally assessed and is taxed at a higher rate than other property; and

WHEREAS, ownership patterns of oil and natural gas property have changed over the last several years; and

WHEREAS, many different entities own oil and natural gas property that is centrally assessed; and

WHEREAS, higher property taxes on this property may impede the competitive position of small producers; and

WHEREAS, several owners of oil and natural gas property have challenged the Department of Revenue's authority to centrally assess certain oil and natural gas property; and

WHEREAS, it is in the public interest to establish a balance between the financial needs of local governments and the equitable taxation of oil and natural gas property.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the assessment and taxation of oil and natural gas property,

with a focus on oil and natural gas property that is centrally assessed. The study should include but not be limited to:

- (1) an evaluation of the types of oil and natural gas property subject to taxation;
- (2) the ownership patterns of oil and natural gas property subject to central assessment;
- (3) an analysis of the importance of oil and natural gas property to the property tax structure of taxing jurisdictions, including the state;
- (4) a review of the Department of Revenue's assessment procedures and practices with respect to oil and natural gas property, especially property that is centrally assessed by the Department; and
- (5) an analysis of the state's policy regarding the taxation of oil and natural gas property.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded before September 15, 2006.

Adopted April 19, 2005

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY OPTIONS FOR FUNDING MECHANISMS AND ALLOCATIONS FOR DEPLOYMENT OF A STATEWIDE WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM.

WHEREAS, current statewide enhanced 9-1-1 has saved lives across Montana; and

WHEREAS, because most public safety answering points (PSAPs) and wireless telecommunications service providers in Montana have not deployed Phase I and Phase II wireless enhanced 9-1-1 service; and

WHEREAS, it is in the best interest of all Montanans to ensure that there is adequate funding to support the deployment and ongoing delivery of enhanced 9-1-1 service to locate and rescue people who dial 9-1-1; and

WHEREAS, the 2005 Legislature, through the introduction of House Bill No. 775, attempted to authorize and distribute funding for statewide wireless enhanced 9-1-1; and

WHEREAS, the wireless service providers, PSAPs, and public safety agencies could not come to a consensus on a timely, efficient, effective, equitable, and nondiscriminatory funding and distribution mechanism for statewide enhanced 9-1-1 deployment, and as a result, House Bill No. 775 was tabled in committee; and

WHEREAS, the House Federal Relations, Energy, and Telecommunications Committee felt that given the importance of the public safety issues involved

and the lack of consensus among the interested parties regarding an appropriate funding and allocation mechanism for enhanced 9-1-1 deployment, an interim study was necessary to investigate and resolve these issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and develop legislation to address appropriate funding of enhanced 9-1-1 deployment in Montana.

BE IT FURTHER RESOLVED, that any funding mechanism developed not discriminate among PSAPs or providers of wireless enhanced 9-1-1 service on the basis of rural or urban areas served, size or type of enhanced 9-1-1 service provider, or other potentially discriminatory factors.

BE IT FURTHER RESOLVED, that a proposed fee, if any, to be imposed on end users be equitable and efficient and that this fee be based on verifiable actual costs that are not proprietary or confidential in nature and that are associated with the provision of enhanced 9-1-1 service in Montana.

BE IT FURTHER RESOLVED, that the appropriate interim committee, in consultation with all parties, including large and small wireless and wireline providers of enhanced 9-1-1 service, PSAPs, the 9-1-1 Advisory Council, the Public Safety Services Office of the Department of Administration, and other interested parties, propose legislation for consideration by the 60th Legislature of the State of Montana that establishes an appropriate level of funding, if any, and an appropriate funding mechanism by which to facilitate deployment of enhanced 9-1-1 services in Montana that conform to state and federal law.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

**RULES OF THE MONTANA
HOUSE OF REPRESENTATIVES**

CHAPTER 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, a House Democratic Leader, a House Republican Leader, Democratic and Republican floor leaders, and Democratic and Republican whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day after good faith consultation with the House Democratic Leader and the House Republican Leader. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the House Leader of the opposite party, the Speaker will submit a request for a fiscal note on any bill.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and

shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

(4) The House Democratic Leader and the House Republican Leader shall meet and reach an agreement on the office space allocated to each political party. If there is no House Democratic Leader, the Speaker shall act on behalf of the Democrats.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff. All House staff hired to date will be retained.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and Democratic and Republican floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, “For what purpose does the member rise?” or “For what purpose does the member seek recognition?” and may then decide if recognition is to be granted. There is no appeal from the Speaker’s or presiding officer’s decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, “Shall the decision of the chairman be sustained?”.

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former

legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Senate;
- (5) messages from the Governor;
- (6) first reading and commitment of bills;
- (7) second reading of bills;
- (8) third reading of bills;
- (9) motions;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

H20-70. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-80. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

H20-90. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the Democratic or Republican floor leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the Democratic or Republican floor leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments. (1) The following are the standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Federal Relations, Energy, and Telecommunications; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

(2) (a) Each standing committee must be composed of an equal number of members of each political party.

(b) There will be an equal number of committees chaired by the members of each political party.

(c) There must be two vice chairmen for each committee, one from each political party.

(d) The Democrats will chair the following standing committees: Appropriations; Business and Labor; Education; Ethics; Fish, Wildlife, and Parks; Human Services; Rules; and State Administration.

(e) The Republicans will chair the following standing committees: Agriculture; Federal Relations, Energy, and Telecommunications; Judiciary; Legislative Administration; Local Government; Natural Resources; Taxation; and Transportation.

(f) The House Democratic Leader, in consultation with the Speaker, shall appoint the Democratic committee chairmen and vice chairmen, and the House Republican Leader, in consultation with the Speaker, shall appoint the Republican committee chairmen and vice chairmen. The authority to appoint a chairman or vice chairman carries with it the power to remove that chairman or vice chairman from a committee.

(g) The members of the standing and select committees must be appointed by the House Democratic Leader and the House Republican Leader after good faith consultation with the Speaker and the other House Leader. The Speaker shall appoint a total of three members to standing committees. After the Speaker has made appointments, the Democratic House Leader and the Republican House Leader shall appoint the members of their respective parties. The authority to appoint a member carries with it the power to remove that member from a committee.

(h) There will be six subcommittees of the Committee on Appropriations. Three subcommittees will be chaired by Democratic representatives, and three subcommittees will be chaired by Republican representatives. The chairman of the Committee on Appropriations shall choose the first subcommittee chairman, and the vice chairman of the Committee on Appropriations from the other political party shall choose the second subcommittee chairman. The parties shall then alternate the selection of the remaining subcommittee chairmen.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice

chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. (1) The principal duties of the chairman of standing or select committees are to:

- (a) preside over meetings of the committee and to put all questions;
- (b) maintain order and decide all questions of order subject to appeal to the committee;
- (c) supervise and direct staff of the committee;
- (d) have the committee secretary keep the official record of the minutes;
- (e) sign reports of the committee and submit them promptly to the Chief Clerk;
- (f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and
- (g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. A subcommittee must be composed of an equal number of members from each political party. The chairman of the standing committee shall appoint the chairman of the subcommittee.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the House Democratic Leader, the House Republican Leader, the Democratic floor leader, and the Republican floor leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

- (2) A committee or subcommittee may be assembled for:
 - (a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;
 - (b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or
 - (c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.
- (3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the

general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

- (a) the time and place of each meeting of the committee;
- (b) committee members present, excused, or absent;
- (c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;
- (d) all motions and their disposition;
- (e) the results of all votes;
- (f) references to the recording log, sufficient to serve as an index to the original recording; and
- (g) testimony and exhibits submitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

- (3) The committee shall act on each bill in its possession:
 - (a) by reporting the bill out of the committee:
 - (i) with the recommendation that it be referred to another committee;
 - (ii) favorably as to passage; or
 - (iii) unfavorably; or
 - (b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation. Except as provided in subsection (5), a tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill "do pass" or "do not pass", does not result in the matter passing out to the whole House for consideration without recommendation.

(5) Each political party is entitled to choose 12 bills on which a tie vote in committee will result in the matter passing out of committee to the whole House without recommendation. The bills must be chosen by the House Democratic Leader for the Democratic party and the House Republican Leader for the Republican party. The House Democratic Leader and the House Republican Leader may agree in writing to increase the number of bills on which a tie vote in committee will result in the matter passing out of committee to the whole House without recommendation.

(6) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(7) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required.

(8) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(9) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(10) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(11) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(12) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(13) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(14) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(15) The chairman shall decide points of order.

(16) The privileges of committee members include the following:

- (a) to participate freely in committee discussions and debate;
- (b) to offer motions;
- (c) to assert points of order and privilege;
- (d) to question witnesses upon recognition by the chairman;
- (e) to offer any amendment to any bill; and
- (f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(17) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(18) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(19) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed

legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) If the Speaker is not the elected leader of the Democratic caucus, the Rules Committee shall establish the jurisdiction of each standing committee and all properly introduced House legislation and transmitted Senate legislation must be referred to a House committee, joint select committee, or joint special committee by the Chief Clerk of the House in conformity to the committee jurisdiction. The assignment of a bill to a committee may be appealed to the Rules Committee by either House Leader. If the Rules Committee does not reassign a bill to another committee, the original assignment may not be changed unless accomplished by motion on the House floor.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

H40-80. Rereferral — normal progression. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) Subject to H30-50(5), a House standing committee recommendation of “do pass” or “be concurred in” must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of “do not pass” or “be not concurred in” must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a “consent calendar” item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the Republican floor leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a “consent calendar” item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow “reasonable time” for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill “do pass” or “be concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do not pass” or “be not concurred in”, is considered to have passed. If a motion to recommend that a bill “do not pass” or “be not concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do pass” or “be concurred in”, is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the Democratic floor leader, the Republican floor leader, and sponsor agree, amendments must be printed and placed on the members’ desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the Democratic floor leader and the Republican floor leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it may be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

(4) Conference committees must be composed of an equal number of members from each political party. The members of conference committees must be appointed by the House Democratic Leader and the House Republican Leader after good faith consultation. Each leader shall appoint the members of the leader's respective party. If there is no House Democratic Leader, then the Speaker shall appoint the members.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3. A tie vote in a conference committee on the question of a recommendation to the whole House on a matter referred for a conference results in the matter passing out to the whole House for consideration without recommendation.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5**Floor Actions**

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the

consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as “representatives present and voting”.

(4) The floor leader of the party of the Speaker shall make routine procedural motions required to conduct the business of the House.

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

- (c) to recess or rise;
- (d) for a question of privilege;
- (e) to table;
- (f) to call for the previous question or cloture;
- (g) to postpone consideration to a day certain;
- (h) to refer to a committee; and
- (i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. Except as provided in H40-180, a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling bills (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto (two-thirds);

(2) a call of the House with a quorum (one-third);

(3) a motion to lift a call of the House (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee (three-fifths);

(6) a motion to add legislation to the second or third reading agenda (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote (unanimous);

(9) a motion to call for cloture (two-thirds);

(10) a motion to take from the table in Committee of the Whole (three-fifths).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a vote (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

H50-200. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-210. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading.

H50-220. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-230. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-240. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6**Motions**

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

- (1) to adjourn;
- (2) for a call of the House;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) to table or to take from the table;
- (6) to call for the previous question or for cloture;
- (7) to amend a nondebatable motion;
- (8) to divide a question;
- (9) to postpone consideration to a day certain;
- (10) to suspend the rules; and
- (11) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

- (a) to adjourn;
 - (b) for a call of the House;
 - (c) to recess or rise;
 - (d) for a question of privilege;
 - (e) to table or take from the table;
 - (f) to call for the previous question or cloture;
 - (g) to postpone consideration to a day certain;
 - (h) to refer or rerefer; and
 - (i) to propose amendments.
- (2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.
- (3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

- (a) when the House is voting on another motion;
- (b) when the previous question has been ordered and before the final vote;
- (c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was () with a vote tally of ___ for and ___ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7**Rules**

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

Agriculture: Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

Appropriations: Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

Education: Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

Ethics: Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

Federal Relations, Energy, and Telecommunications: Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

Fish, Wildlife, and Parks: Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

Human Services: Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

Judiciary: Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law; privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

Legislative Administration: Interim committees and subjects assigned by H10-50.

Local Government: Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

Natural Resources: Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

Rules: House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

State Administration: Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

Taxation: Taxes other than fuel taxes.

Transportation: Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by unanimous agreement of the Speaker, the House Democratic Leader, and the House Republican Leader.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker, upon unanimous agreement with the House Democratic Leader and the House Republican Leader, may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chairs determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker, upon unanimous agreement with the House Democratic Leader and the House Republican Leader, shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 27, 2005

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING, AND REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO OPPOSE, FEDERAL LEGISLATION ESTABLISHING STANDARDS FOR BIRTH CERTIFICATES ISSUED BY THE STATES AND EITHER FORCING, OR BY THE THREAT OF WITHHOLDING FUNDS OR OTHER ACTION OR INACTION, PERSUADING THE STATES TO ADOPT THE STANDARDS.

WHEREAS, there is at least one bill before the U.S. Congress that would set federal standards for birth certificates issued by the states; and

WHEREAS, the House does not wish to be forced into adopting federal standards.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House be opposed to federal legislation establishing standards for birth certificates issued by the states and either forcing, or by the threat of withholding funds or other action or inaction, persuading the states to adopt the standards.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be strongly urged to work against the legislation.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Montana Congressional Delegation and to the publisher of each newspaper in this state.

Adopted February 19, 2005

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for

legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

- (a) maintain personnel files for legislative employees; and
- (b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

- (i) errors in spelling;
- (ii) errors in numbering sections;
- (iii) additions or deletions of underlining or lines through matter to be stricken;
- (iv) material copied incorrectly from the Montana Code Annotated;
- (v) errors in outlining or in internal references;
- (vi) an error in a title caused by an amendment;
- (vii) an error in a catchline caused by an amendment;
- (viii) errors in references to the Montana Code Annotated; and
- (ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

(5) For the purposes of this rule, “engrossing” means placing amendments in a bill.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

- (a) printed on paper with numbered lines;
- (b) numbered at the foot of each page (except page 1);
- (c) covered with a cover page of substantial material; and

(d) introduced.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

- (a) acceptance or rejection of each disputed amendment in its entirety; or
- (b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

- (a) either house has fewer members on the joint subcommittees;
- (b) the chair represents the house with fewer members on the subcommittees; and
- (c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

- (1) Economic Affairs Interim Committee:
 - (a) Senate Agriculture, Livestock, and Irrigation Committee;
 - (b) Senate Business, Labor, and Economic Affairs Committee;
 - (c) Senate Energy and Telecommunications Committee;
 - (d) Senate Finance and Claims Committee;
 - (e) House Agriculture Committee;
 - (f) House Business and Labor Committee;
 - (g) House Federal Relations, Energy, and Telecommunications Committee;
- and
- (h) House Appropriations Committee;
- (2) Education and Local Government Interim Committee:
 - (a) Senate Education and Cultural Resources Committee;
 - (b) Senate Local Government Committee;
 - (c) Senate Finance and Claims Committee;
 - (d) House Education Committee;
 - (e) House Local Government Committee; and
 - (f) House Appropriations Committee;
- (3) Children, Families, Health, and Human Services Interim Committee:
 - (a) Senate Public Health, Welfare, and Safety Committee;
 - (b) Senate Finance and Claims Committee;
 - (c) House Human Services Committee; and
 - (d) House Appropriations Committee;
- (4) Law and Justice Interim Committee:
 - (a) Senate Judiciary Committee;
 - (b) Senate Finance and Claims Committee;
 - (c) House Judiciary Committee; and
 - (d) House Appropriations Committee;
- (5) Revenue and Transportation Interim Committee:
 - (a) Senate Taxation Committee;
 - (b) Senate Highways and Transportation Committee;

- (c) Senate Finance and Claims Committee;
- (d) House Taxation Committee;
- (e) House Transportation Committee; and
- (f) House Appropriations Committee;
- (6) State Administration and Veterans' Affairs Interim Committee:
- (a) Senate State Administration Committee;
- (b) Senate Finance and Claims Committee;
- (c) House State Administration Committee; and
- (d) House Appropriations Committee;
- (7) Energy and Telecommunications Interim Committee:
- (a) Senate Energy and Telecommunications Committee;
- (b) House Federal Relations, Energy, and Telecommunications Committee;
- (c) House Appropriations Committee; and
- (d) Senate Finance and Claims Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures.

(1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least

five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be

preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline
	5:00 P.M.
	Legislative Day
• General Bills and Resolutions	10
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills	62
• Committee Bills implementing provisions of a general appropriation act	75
• Interim study resolutions	75
• Appropriation Bills	No Deadline
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) Bills and resolutions must be introduced within 2 legislative days after delivery.

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

- (a) express desire, opinion, sympathy, or request of the Legislature;
- (b) request, but not require, a legislative entity to conduct an interim study;
- (c) adopt, amend, or repeal the joint rules;
- (d) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(e) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(f) submit a negotiated settlement under section 39-31-305(3), MCA;

(g) declare or terminate an energy emergency under section 90-4-310, MCA;

(h) ratify or propose amendments to the United States Constitution; or

(i) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies.

A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A

bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

- (a) the estimated increase or decrease in revenues or expenditures;
- (b) costs that may be absorbed without additional funds; and
- (c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

- (a) a committee considering the bill;
- (b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

- (a) enrolled;
- (b) clerically corrected by the presiding officers, if necessary;
- (c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a

conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the House no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

- (a) bills proposing amendments to The Constitution of the State of Montana;
- (b) bills ratifying proposed amendments to the United States Constitution;
- (c) resolutions; and
- (d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

60-40. Tenure of joint rules. The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted February 11, 2005

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING MONTANA TRIBAL GOVERNMENTS TO ADOPT SECURED TRANSACTION COMMERCIAL CODES, ENCOURAGING THE DEVELOPMENT OF TRAINING PROGRAMS FOR TRIBAL COURTS ON THE USE OF THE CODES, AND REQUESTING AN APPROPRIATE LEGISLATIVE COMMITTEE TO REPORT ON THE IMPLEMENTATION OF THE CODES AND THE TRAINING.

WHEREAS, economic development and affordable housing needs are among the most critical of issues facing Indian Country; and

WHEREAS, one significant barrier frequently faced by American Indian-owned businesses and American Indian consumers on reservations is the lack of access to affordable credit for business, housing, or other consumer purposes; and

WHEREAS, the importance of credit as a fundamental component of economic and housing development cannot be overstated; and

WHEREAS, the pervasive lack of access to affordable credit and capital can be generally attributed to the fears and apprehensions routinely expressed by non-Indian lenders and other potential business partners and investors; and

WHEREAS, this has been a persistent problem throughout Indian Country; and

WHEREAS, commercial codes are important tools for enabling and supporting tribal economic and housing development by improving access to commercial and consumer credit; and

WHEREAS, fundamental to the goal of building sound economies is the need for commercial laws that will enhance tribal business environments by reducing risks for outside lenders and other nontribal entities that do business with tribes, tribal enterprises, Indian-owned private businesses, and Indian consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That each tribal government in Montana be encouraged to review the model tribal secured transaction law developed by the National Conference of Commissioners on Uniform State Laws and, if agreeable to the tribal government, adopt the model law for use on its reservation.

BE IT FURTHER RESOLVED, that the Montana Bar Association, the University of Montana Law School, the Montana Judiciary, and the Legislature be encouraged to, upon request, assist tribal courts in developing and implementing a training course, including ongoing education, on the use of secured transaction commercial codes.

BE IT FURTHER RESOLVED, that the Legislative Council be requested to designate an appropriate interim committee or statutory committee to provide a report to the 60th Legislature on the review and implementation of secured transaction commercial codes by tribal governments and the implementation of the training for tribal courts.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Montana Bar Association, the University of Montana Law School, the Montana Supreme Court, the 22 judicial districts, and each tribal government located on the seven Montana reservations.

Adopted April 4, 2005

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY ACCESS BY LOW-INCOME MONTANANS TO THE MONTANA CIVIL LEGAL SYSTEM AND TO DETERMINE WHETHER ANY CHANGES ARE APPROPRIATE.

WHEREAS, nearly one out of every five Montanans, 190,000 people, live at or near the federal poverty level, and Montana ranks 10th in the overall poverty rate among the states and ranks 45th in median household income and 46th in per capita income; and

WHEREAS, a comprehensive legal needs study has recently been completed by the Equal Justice Task Force created by the Montana Supreme Court; and

WHEREAS, although the data from the legal needs study is just beginning to be analyzed, preliminary results of the legal needs study show that 85% of Montana's poor and near-poor residents have at least one legal problem a year; and

WHEREAS, federal funding for civil legal assistance to the poor has been substantially reduced in recent years; and

WHEREAS, in 1996, the Montana Legal Services Association, Montana's only general statewide civil legal assistance provider, suffered a 48% reduction in federal funding, which has never been restored, and the Montana Legal Services Association's Legal Assistance to Victims grant from the U.S. Department of Justice Violence Against Women Act Office was not renewed for 2005, resulting in further reductions in services to low-income people; and

WHEREAS, although there is one private attorney for every 365 Montana residents, there is only one Montana Legal Services Association attorney for every 13,000 low-income residents; and

WHEREAS, the State of Montana provides no funding for civil legal assistance to Montana's low-income population; and

WHEREAS, reductions in civil legal assistance funding for the poor has been exacerbated by the low rate of return on the Interest on Lawyers Trust Accounts funds, managed by the Montana Justice Foundation, one of the few additional funding sources for civil legal services to the poor; and

WHEREAS, denial of access to Montana's civil legal system prevents Montana residents from realizing the protections afforded by the Montana Constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the access to the legal system in Montana that is provided to low-income Montanans and to determine whether any changes may be appropriate. The study must include:

(1) a review of the unmet civil legal needs of low-income residents of Montana using the recently completed legal needs study;

(2) a review of technological advances in place to serve the civil legal needs of low-income Montanans and of whether additional resources or further coordination of technological resources could address all or part of the unmet needs;

(3) a review of the services and resources being provided by the attorneys in private practice, governmental agencies, and nongovernmental organizations to meet the civil legal needs of low-income residents of Montana and of the efforts underway to increase those services, resources, or both;

(4) changes in state law necessary to facilitate the provision of civil legal services to those unable to afford them;

(5) a review of funding sources currently available to address civil legal needs of low-income Montanans;

(6) a determination of the level of public funding required to provide the assistance necessary to enhance equal access to the Montana justice system;

(7) a review of revenue options that could be considered in providing state funding for civil legal services for low-income residents of Montana and the manner in which state funds could be appropriated;

(8) a determination of the types and numbers of civil cases in which legal services or resources are provided to low-income Montanans through public or private sources;

(9) a review of and recommendation regarding possible alternative methods of providing needed legal services and resources to low-income Montanans other than by direct representation by attorneys;

(10) a review of courts' involvement in assisting low-income Montanans who appear before the courts to receive needed legal or other services;

(11) a review of how the youth courts may be used to reduce recidivism in the youth court system by providing referrals to services for at-risk families; and

(12) any other aspect of the administration of access to justice for low-income Montanans that is determined to be appropriate.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to request information and staff assistance from the Legislative Fiscal Division.

BE IT FURTHER RESOLVED, that the committee or staff be directed to develop a specific list of options, including an option of no action, to be considered for recommendation to the 60th Legislature.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 18, 2005

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE IMPORTANCE OF THE TRANSBOUNDARY REGION OF THE FLATHEAD LAKE AND RIVER DRAINAGE; URGING THAT THE GOVERNOR OF MONTANA NEGOTIATE AN OPERATING AGREEMENT WITH THE GOVERNMENT OF BRITISH COLUMBIA; AND URGING THAT THE INTERNATIONAL JOINT COMMISSION CONDUCT AND COMPLETE AN ENVIRONMENTAL ASSESSMENT PRIOR TO A FINAL DECISION ON COAL BED METHANE AND OTHER HYDROCARBON DEVELOPMENT IN THE VALLEY OF THE FLATHEAD RIVER AND CRITICAL ADJACENT ENVIRONS.

WHEREAS, the people of Montana are grateful to God for the quiet beauty of our state, the grandeur of our mountains, the clarity of our skies, and the purity of our water; and

WHEREAS, Montana has recognized that all persons are endowed with the inalienable right to a clean and healthful environment; and

WHEREAS, the Flathead river system and Flathead Lake contain some of the most pure water in Montana, the nation, and the world; and

WHEREAS, the Flathead is recognized nationally and internationally for its unique and invaluable attributes and characteristics as evidenced by the establishment of Waterton-Glacier International Peace Park; the Great Bear, Bob Marshall, and Mission Mountains Wilderness; the Wild and Scenic Flathead River system; and the International Biosphere Reserves; and

WHEREAS, the long-term economic vitality of northwestern Montana depends in significant measure on preserving world-class waters, fish, wildlife, clean and clear air, and recreational opportunities; and

WHEREAS, Montana recognizes the sovereign right of Canada and the Province of British Columbia to govern their territory and also recognizes that with rights come attendant responsibilities; and

WHEREAS, Montana supports responsible mining and extraction of hydrocarbons, including coal, coal bed methane, oil, and natural gas, where it can be ensured that there will be no unacceptable adverse environmental impacts; and

WHEREAS, resolutions of the Legislature in 1975 and 1989 called on British Columbia to take every possible precaution not to degrade the air and water in the Flathead drainage; and

WHEREAS, on the 15th day of September 2003 the Governor of Montana and the Premier of British Columbia signed a historic environmental cooperation arrangement pledging mutual cooperation and understanding in transboundary issues and requiring a further operating agreement and action plan to be negotiated to implement the agreement; and

WHEREAS, new proposals for coal and coal bed methane development in the Flathead valley and critical adjacent environs in British Columbia are imminent possibilities; and

WHEREAS, there has not been a complete environmental assessment of the impacts of new coal field development on the valley of the north fork of the Flathead River and critical adjacent environs; and

WHEREAS, former Governor Judy Martz and the Montana Congressional Delegation have all requested that a comprehensive environmental assessment be completed prior to coal bed methane gas development in the Canadian headwaters of the Flathead River; and

WHEREAS, the International Joint Commission has expressed its readiness to assist the U.S. and Canadian governments in preventing and resolving environmental disputes in the transboundary areas addressed in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor of Montana be urged to negotiate an operating agreement with the Premier of British Columbia that implements in a meaningful and measurable manner the 2003 environmental cooperation arrangement to resolve transboundary issues.

BE IT FURTHER RESOLVED, that the Legislature of the State of Montana urges that the International Joint Commission conduct a comprehensive environmental assessment of the impacts of developing hydrocarbon resources on the transboundary resources and waters of the valley of the north fork of the Flathead River and critical adjacent environs prior to a final decision on whether or not to approve hydrocarbon development and in particular coal mines and coal bed methane in these transboundary areas.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING FEDERAL FUNDS FOR REHABILITATION OF THE ST. MARY DIVERSION FACILITIES AND URGING THE SUPPORT AND LEADERSHIP OF THE MONTANA CONGRESSIONAL DELEGATION.

WHEREAS, the Milk River Project was authorized in 1903 as one of five initial projects for the newly created U.S. Reclamation Service; and

WHEREAS, the St. Mary Diversion Dam and Canal (St. Mary diversion facilities) were authorized in 1905; and

WHEREAS, construction of the St. Mary diversion facilities was started in 1906 and the facilities started delivering water in 1916; and

WHEREAS, the St. Mary diversion facilities deliver nearly the entire water supply to Montana's Milk River Basin; and

WHEREAS, the Milk River would go dry 6 out of every 10 years without the St. Mary diversions; and

WHEREAS, the regional economy of the Milk River Basin has developed around the Milk River Project and the water supplied through the St. Mary diversion facilities; and

WHEREAS, the regional economy of the Milk River Basin represents a significant part of the Montana economy including agriculture; and

WHEREAS, recreational and wildlife benefits have evolved as a result of the Milk River Project; and

WHEREAS, municipal water supplies are dependent upon the continued operation of the St. Mary diversion facilities; and

WHEREAS, the Fort Belknap Reserved Water Rights Compact is predicated upon the continued operation of the St. Mary diversion facilities; and

WHEREAS, operation of the St. Mary diversion facilities has significantly impacted land, wildlife, and water resources of the Blackfeet Tribe; and

WHEREAS, current operations of the St. Mary diversion facilities impact critical habitat for the threatened bull trout; and

WHEREAS, the St. Mary diversion facilities are operating well beyond their design life; and

WHEREAS, the risk of a catastrophic failure of key structures increases for each year of operation; and

WHEREAS, cost estimates of repair and replacement far exceed the ability of current contract holders to pay expenses using operation and maintenance revenue; and

WHEREAS, the St. Mary diversion facilities are owned and operated by the United States; and

WHEREAS, the United States is not taking the lead to rehabilitate the St. Mary diversion facilities with a cost-share mechanism in a timely manner; and

WHEREAS, the State of Montana, the Blackfeet Tribe, and other parties with interest in the Milk River have formed the St. Mary rehabilitation working group to identify a workable solution to rehabilitation and replacement of the St. Mary diversion facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature strongly supports the rehabilitation of the St. Mary diversion facilities and the work of the St. Mary rehabilitation working group.

(2) That Congress is requested to immediately appropriate nonreimbursable funds for the State of Montana to complete engineering and environmental investigations necessary to proceed with the rehabilitation of the St. Mary diversion facilities.

(3) That Congress is requested to immediately appropriate nonreimbursable funds for the State of Montana to construct a new bridge across the St. Mary River on the Blackfeet Reservation for safety and rehabilitation reasons.

(4) That the U.S. Department of the Interior is requested to work with the State of Montana, the Blackfeet Tribe, and residents in the Milk River Basin in their efforts to rehabilitate these critical structures and improve management of the Milk River Basin.

(5) That Congress is requested to appropriate money with an appropriate cost-share mechanism, recognizing the ability of residents in the Milk River Basin to provide financial support, for construction and rehabilitation of the St. Mary diversion facilities.

(6) That the Montana Congressional Delegation is requested to make attainment of congressional and federal support for rehabilitation of the St. Mary diversion facilities its utmost priority.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's Congressional Delegation, the Governor of Montana, the Blackfeet Tribe, the Fort Belknap Tribe, and the St. Mary rehabilitation working group.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO LOOK AT THE SUBDIVISION REVIEW PROCESS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 60TH LEGISLATURE.

WHEREAS, the Montana Subdivision and Platting Act was enacted by the Montana Legislature in 1973; and

WHEREAS, since its enactment, the Montana Legislature has adopted numerous amendments to the Montana Subdivision and Platting Act and yet procedural and substantive issues continue to emerge; and

WHEREAS, acting under House Joint Resolution No. 37 from the 2003 Legislative Session, the Education and Local Government Interim Committee, working with a broad-based group of affected and interested parties, was able to reach consensus regarding many subdivision review process issues, resulting in the introduction of Senate Bill No. 116 in the 2005 Legislative Session; and

WHEREAS, members of the Education and Local Government Interim Committee, as well as the citizens involved in the interim study, realize that many substantive issues remain regarding subdivision review and especially its appropriate role in and interplay with local land use planning and regulation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review all relevant portions of the Montana Subdivision and

Platting Act and the Act's appropriate role in and interplay with local government land use planning and regulation, including but not limited to:

(1) a review of the definitions of "division of land" and "subdivision" in Title 76, chapter 3, MCA;

(2) a review of the exemptions to subdivision review in Title 76, chapter 3, MCA; and

(3) the need to clarify the intent of the Legislature in determining when a subdivision review is required.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 18, 2005

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROMOTING CIVIC EDUCATION IN MONTANA'S ELEMENTARY AND SECONDARY SCHOOLS.

WHEREAS, a high level of disengagement, especially among American youth, demands a recommitment to education for active and effective citizenship; and

WHEREAS, concerted public and academic action is needed to review and reestablish civic education as a high priority in schools and public life; and

WHEREAS, teaching and encouraging the development of citizenship and patriotic values among young people has long been recognized as one of the most important goals of education; and

WHEREAS, schools are one of the places where young people learn to interact and work together for a common purpose; and

WHEREAS, into the late 1960s, schools offered courses in civics, democracy, and government, but today most formal civic education consists of a single government course; and

WHEREAS, the time has come for schools to assist students in becoming competent and responsible citizens who are informed and thoughtful, participate in the community, act politically, and possess civic virtues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Public Education, the Superintendent of Public Instruction, and local school board trustees be encouraged to:

- (1) promote instruction in government, history, law, democracy, and freedom;
- (2) foster an appreciation for America's founders, our free institutions, and the moral and intellectual foundations of our nation;
- (3) incorporate discussion of current local, national, and international issues into the classroom;
- (4) provide students with learning opportunities through community service;
- (5) offer extracurricular activities that provide for involvement in the school and community; and
- (6) encourage student participation in school governance.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of Public Education and the Superintendent of Public Instruction for distribution to each school district in Montana.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION.

WHEREAS, direct and unobstructed participation in international health cooperation forums and programs is crucial for all parts of the world, especially with today's greater potential for the cross-border spread of various infectious diseases; and

WHEREAS, Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of the infectious diseases of cholera, smallpox, and plague, and being the first Asian nation to eradicate polio and the first country in the world to provide children with free hepatitis B vaccinations; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwanese counterpart have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years, Taiwan has expressed a willingness to financially and technically assist the international aid and health activities supported by the World Health Organization; and

WHEREAS, Taiwan's population of 23 million people is larger than that of 75% of the World Health Organization member states; and

WHEREAS, the United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations; and

WHEREAS, Taiwan's participation in the activities of the World Health Organization could bring many benefits to the state of health not only in Taiwan but also regionally and globally.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature strongly urge that Taiwan be permitted appropriate and meaningful participation in the activities of the World Health Organization.

BE IT FURTHER RESOLVED, that the Montana Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Director General of the Taipei Economic and Cultural Office in Seattle, and the World Health Organization.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY REGARDING THE MISSIONS AND OPERATION OF THE MONTANA NATIONAL GUARD FOR THE PURPOSES OF STATE ACTIVE DUTY PERFORMED TO MEET STATE EMERGENCIES.

WHEREAS, members of the Montana National Guard, like members of other states' National Guard organizations, serve in either a federal or a state status; and

WHEREAS, the alert system, mobilization and demobilization, deployment and redeployment, pay and benefits, retirement qualification and benefits, life and health insurance provisions, and death benefits for members of the National Guard serving in a federal active duty status are mostly established by federal law and regulation and are reviewed and studied from time to time by the Department of Defense and the United States Congress; and

WHEREAS, the same subjects for members of the Montana National Guard while serving in a state status on State Active Duty (SAD) are governed by state law and regulations of the Montana Department of Military Affairs; and

WHEREAS, SAD is used for many different kinds of state emergencies, including such emergencies as wildfire suppression and strikes at state institutions, and those types of emergencies are difficult to predict, requiring availability of forces, through a mobilization and deployment system, virtually 24 hours a day, 7 days a week, all year long; and

WHEREAS, there may be a need for more Montana National Guard members to serve more state duty in a SAD status in the future, for the purposes of reaction to weapons of mass destruction threats and for antiterrorist missions, because not every response by the National Guard to unidentified causes of emergencies can or will be paid for by the United States; and

WHEREAS, the necessity for SAD, the process by which National Guard members are called to SAD, the conditions under which members serve on SAD, the deployment and redeployment system, the benefits available to them on and after SAD, the laws under which they serve on SAD, and other practical and legal implications of SAD service have not ever been studied by the Legislature; and

WHEREAS, the service of members of the Montana National Guard on SAD is extremely important to the residents of Montana and to state and local

governments in Montana because the state needs an organized, trained, and equipped force ready to respond to state emergencies at the call of the Governor; and

WHEREAS, it is therefore fitting and proper that the Legislature review all aspects of SAD in order to become informed regarding mechanisms and missions of SAD and to determine whether the laws governing the National Guard need to be updated or otherwise changed to enhance the execution of SAD missions and to reflect national and state priorities for the use of the Montana National Guard while on SAD.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to work in collaboration with the Department of Military Affairs and other appropriate groups to:

(1) receive information from the Department of Military Affairs and other federal, state, and local government agencies, as well as persons from the private sector, to determine what aspects of SAD function well and those aspects that need further attention by the Legislature;

(2) examine the method by which state emergencies are declared and ended and the system by which the Montana National Guard is alerted, mobilized, deployed, and redeployed and serves on SAD;

(3) study the preparation, training, mission, and tasks of the Montana National Guard as they relate to the type of emergency for which the Guard is placed on SAD;

(4) study the pay, benefits, and support furnished members of the National Guard while being called to, serving on, and completing SAD;

(5) study the types of emergencies for which the National Guard has been called to SAD and the types of emergencies for which it may be called to SAD in the future and determine how well current practices and statutes relate to those missions; and

(6) examine the laws under which the National Guard is called to duty and executes its SAD missions, to determine whether to ascertain the appropriateness of those laws, given the National Guard's past, present, and future missions while on SAD.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 16, 2005

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING RENEWABLE ENERGY DEVELOPMENT; AND URGING THE UNITED STATES CONGRESS TO SUPPORT THE RENEWABLE ENERGY PRODUCTION INCENTIVE PROGRAM AND PRODUCTION TAX CREDIT PROGRAM.

WHEREAS, renewable energy supply brings fuel diversity benefits and mitigates market dominance by a very few energy fuel types in the nation's mix of energy supplies, enhances national security by reducing dependence on imported fuels, and decreases environmental impacts compared to traditional methods of electricity generation; and

WHEREAS, increasing public preference and consumer demand support renewable energy generation and product development and commercialization; and

WHEREAS, renewable energy production costs have progressively declined and performance has steadily improved and promises continued improvement; and

WHEREAS, encouraging use of renewable energy resources has been an important national goal since the passage of the Energy Policy Act of 1992; and

WHEREAS, the United States Congress established the Renewable Energy Production Incentive (REPI) Program, in the Energy Policy Act of 1992, to provide direct payments of 1.5 cents per kilowatt hour to any public, not-for-profit utility for energy it produces through new renewable energy projects brought online between October 1993 and September 30, 2003, during the first 10 years of the utility's operation; and

WHEREAS, the United States Congress also established the Energy Production Tax Credit (PTC) Program, in the Energy Policy Act of 1992, to provide a wind production tax credit of 1.5 cents per kilowatt hour for electrical energy produced from a new facility brought online after December 31, 1993, and before July 1, 1999, for the first 10 years of the facility's operation; and

WHEREAS, the United States Congress has extended and expanded the PTC Program three times over the past 6 years, in 1999, in 2001, and again in 2004, but each time Congress has allowed the credit to expire before acting and has then approved only short-term extensions; and

WHEREAS, funding for the REPI Program has remained far below the level needed to maximize the potential of the incentive, supporting only a fraction of the qualified renewable energy projects that apply each year; and

WHEREAS, authorization for the current REPI Program expired on September 30, 2003, and authorization for the current PTC Program expires on December 31, 2005; and

WHEREAS, given the 2-year or 3-year lead time required for bringing facilities online, the expiration of the REPI and PTC Programs is currently slowing the implementation of hundreds of megawatts worth of future projects and is frustrating plans to build new turbine manufacturing facilities that could supply these projects; and

WHEREAS, failure to extend the REPI and PTC Programs means that contracts will be put on hold, workers will be laid off, and the growing

momentum toward developing renewable energy markets will again be brought to a halt; and

WHEREAS, additional renewable technologies could also benefit from a production incentive or tax credit, just as solar, wind, geothermal, closed-loop biomass, and poultry waste have done through the existing REPI and PTC Programs; and

WHEREAS, tradable tax credits for renewable energy, consisting of a production tax credit that a public or consumer-owned utility can accrue by developing and owning a renewable energy facility and then selling to the private sector, will:

- (1) facilitate public/private partnerships;
- (2) benefit not-for-profit utilities by providing an alternative to the potentially underfunded REPI Program;
- (3) benefit private sector partners that wish to support renewable energy by providing tax credits against existing tax liabilities; and
- (4) further facilitate the development of renewable energy in our region.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be respectfully urged to:

- (1) acknowledge the value of the REPI and PTC Programs to the continued development and commercialization of renewable energy technologies, industries, and markets;
- (2) approve, at a minimum, a 10-year extension of the PTC Program until December 31, 2015, and the retroactive 10-year extension of the REPI Program that was included in the proposed conference report of the Energy Policy Act of 2003;
- (3) expand the eligible resources for the REPI Program to include landfill gas and extend the benefits to additional public utilities and tribes;
- (4) expand the resources eligible for the PTC Program to include geothermal, solar, and both animal and forest waste as biomass feedstocks;
- (5) authorize tradable tax credits for renewable energy; and
- (6) act on this issue immediately, regardless of whether or when comprehensive energy legislation is taken up for consideration.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Montana Congressional Delegation.

Adopted April 4, 2005

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MONTANA CONSTITUTION, THE UNITED STATES CONSTITUTION, AND THE BILL OF RIGHTS; ENCOURAGING VARIOUS ACTIONS IN

SUPPORT OF FIGHTING TERRORISM AND PROTECTING CIVIL RIGHTS AND CIVIL LIBERTIES; REQUESTING THE ATTORNEY GENERAL OF MONTANA TO COMPILE AND DISSEMINATE RELEVANT INFORMATION REGARDING ACTIONS TAKEN BY THE FEDERAL GOVERNMENT UNDER THE USA PATRIOT ACT; AND ENCOURAGING MONTANA'S CONGRESSIONAL DELEGATION TO SUPPORT AND ENSURE THE CIVIL RIGHTS OF ALL MONTANANS AND CITIZENS OF THE UNITED STATES, WHICH INCLUDES ALLOWING THE USA PATRIOT ACT TO EXPIRE.

WHEREAS, the citizens of Montana recognize the Constitution of the United States as our charter of liberty and that the Bill of Rights enshrines the fundamental and inalienable rights of Americans, including the freedoms of religion, speech, assembly, and privacy; and

WHEREAS, each of Montana's duly elected public servants has sworn to defend and uphold the United States Constitution and the Constitution of the State of Montana; and

WHEREAS, the citizens of Montana denounce and condemn all acts of terrorism by any entity, wherever the acts occur; and

WHEREAS, terrorist attacks against Americans, such as those that occurred on September 11, 2001, have necessitated the crafting of effective laws to protect citizens of the United States and others from terrorist attacks; and

WHEREAS, any new security measures of federal, state, and local governments should be carefully designed and employed to enhance public safety without infringing on the civil liberties and rights of innocent citizens of Montana and the United States; and

WHEREAS, certain provisions of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001", also known as the USA PATRIOT Act, allow the federal government to more liberally detain and investigate citizens and to engage in surveillance activities that may violate or offend the rights and liberties guaranteed by our state and federal constitutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 59th Montana Legislature supports the government of the United States in its campaign against terrorism and affirms the commitment of the United States that the campaign not be waged at the expense of essential civil rights and liberties of citizens of this country that are protected in the United States Constitution and the Bill of Rights.

BE IT FURTHER RESOLVED, that it is the policy of the citizens of Montana to oppose any portion of the USA PATRIOT Act that violates the rights and liberties guaranteed under the Montana Constitution or the United States Constitution, including the Bill of Rights.

BE IT FURTHER RESOLVED, that in accordance with Montana state policy, in the absence of reasonable suspicion of criminal activity under Montana law, the 59th Montana Legislature exhorts agents and instrumentalities of this state to not:

(1) initiate or participate in or assist or cooperate with an inquiry, investigation, surveillance, or detention under the USA PATRIOT Act if the action violates constitutionally guaranteed civil rights or civil liberties;

(2) record, file, or share intelligence information concerning a person or organization, including library lending and research records, book and video store sales and rental records, medical records, financial records, student records, and other personal data, even if authorized under the USA PATRIOT Act, if the action violates constitutionally guaranteed civil rights or civil liberties; or

(3) retain any of the intelligence information described in subsections (1) and (2) of this clause if the information violates constitutionally guaranteed civil rights or civil liberties.

BE IT FURTHER RESOLVED, that the Attorney General of Montana is encouraged to review intelligence information currently held by the state, assess the legality and appropriateness of holding the information under the United States Constitution and Montana Constitution, and permanently dispose of all such information to which there is not attached a reasonable suspicion of criminal activity.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature admonishes every agency and instrumentality of the state to not:

(1) use state resources or institutions for the enforcement of federal immigration matters that are the responsibility of the federal government;

(2) collect or maintain information about the political, religious, or social views, associations, or activities of any individual, group, association, organization, corporation, business, or partnership unless the information directly relates to an investigation of criminal activities and there are reasonable grounds to suspect that the subject of the information was, is, or may be involved in criminal conduct; or

(3) engage in racial profiling.

BE IT FURTHER RESOLVED, that state and local law enforcement agencies should not use race, religion, ethnicity, or national origin as factors in selecting individuals to subject to investigatory activities, except when seeking to apprehend a specific suspect whose race, religion, ethnicity, or national origin is part of the description of the suspect.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature requests:

(1) public schools and institutions of higher learning within Montana to provide notice to each individual whose education records have been obtained by law enforcement agents pursuant to section 507 of the USA PATRIOT Act; and

(2) each public library within Montana to post in a prominent place within the library a notice to library users as follows: "WARNING: Under Section 215 of the federal USA PATRIOT Act (Public Law 107-56), records of the books and other material you borrow from this library may be obtained by federal agents. Federal law prohibits librarians from informing you if records about you have been obtained by federal agents. Questions about the law and policy that allows federal agents to obtain and use information about your activities in this library should be directed to: U.S. Attorney General, Department of Justice, Washington, DC 20530".

BE IT FURTHER RESOLVED, that the 59th Montana Legislature encourages the Attorney General of Montana to periodically seek from federal authorities the following information in a form that facilitates an assessment of the effect of federal antiterrorism efforts on the residents of Montana:

(1) the name of each resident of Montana who has been arrested or otherwise detained by federal authorities as a result of terrorism investigations since September 11, 2001, the location of each detainee, the circumstances that led to each detention, the charges, if any, lodged against each detainee, and the name of counsel, if any, representing each detainee;

(2) the number of search warrants that have been executed in Montana pursuant to section 213 of the USA PATRIOT Act and without notice to the subject of the warrant;

(3) the extent of electronic surveillance carried out in Montana under powers granted in the USA PATRIOT Act;

(4) the extent to which federal authorities monitor political meetings, religious gatherings, or other activities within Montana that are protected by the First Amendment;

(5) the number of times that education records have been obtained from public schools and institutions of higher learning in Montana under section 507 of the USA PATRIOT Act;

(6) the number of times that library records have been obtained from libraries in Montana under section 215 or section 505 of the USA PATRIOT Act; and

(7) the number of times that records of the books purchased by store patrons from bookstores in Montana have been obtained under section 215 of the USA PATRIOT Act.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature requests the Attorney General of Montana to compile and transmit to each member of the Legislature, at least once every 6 months, a summary of the information obtained pursuant to the legislative requests made in this resolution and, based on the information and any other relevant information, to include an assessment of the effect of federal antiterrorism efforts on the residents of Montana.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature desires that all public libraries adopt policies that ensure the regular destruction of records, when the records are no longer needed, that may be used to identify the name of a book borrower or the name of any Internet user.

BE IT FURTHER RESOLVED, that in order to protect intellectual privacy rights, the 59th Montana Legislature advises all persons in local businesses and institutions, particularly booksellers, to refrain whenever possible from keeping records that can be used to identify the name of any purchaser and to regularly destroy sales records maintained by the business or institution.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature urges the Montana delegation in the United States Congress to:

(1) correct provisions in the USA PATRIOT Act and other administrative measures that infringe on civil liberties by supporting the sunset provisions of the USA PATRIOT Act, slated to be reviewed by Congress in 2005, and ultimately allow the USA PATRIOT Act to expire; and

(2) support passage of the Security and Freedom Ensured Act of 2003 and the End Racial Profiling Act of 2004.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature urges the Montana Congressional Delegation to vigorously oppose any pending and all

future federal legislation if the legislation infringes on the civil rights and civil liberties of American citizens. Federal legislation that the Montana Congressional Delegation is encouraged to oppose includes but is not limited to the Domestic Security Enhancement Act of 2003, also known as Patriot Act II.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to President George W. Bush, the Attorney General of the United States, Governor Brian Schweitzer, Senator Max Baucus, Senator Conrad Burns, and Representative Dennis Rehberg.

Adopted April 2, 2005

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A PERFORMANCE AUDIT OF THE EXTENT OF CONSERVATION EASEMENTS AND THE PROPERTY TAX POLICY ISSUES ASSOCIATED WITH CONSERVATION EASEMENTS.

WHEREAS, acquisition of development rights through conservation easements, both public and private, has increased dramatically in the past 4 years; and

WHEREAS, negotiated terms relative to the use of these easements may in perpetuity affect any further development on these easements; and

WHEREAS, acquired development rights on these properties may impact the market value of these and adjacent properties; and

WHEREAS, income and estate tax deductions are often an attractive incentive in negotiating easement contracts; and

WHEREAS, the cumulative effect of ongoing acquisition of development rights may present tax implications for counties; and

WHEREAS, land trusts and government agencies are actively acquiring conservation easements in Montana; and

WHEREAS, it is of compelling interest to officials of Montana counties and Montana taxpayers and elected officials to have accurate information available on which to base policy decisions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Audit Committee prioritize a performance audit of the extent of conservation easements and the property tax policy issues associated with conservation easements.

(2) That the Committee identify the cause of the conflicting information available.

(3) That the Committee recommend a method for compiling this information in a readily available format for use by the Legislature and interested parties.

(4) That the Committee evaluate relevant information to determine trends in conservation easements and development of agricultural lands that would indicate potential for shifts in tax collections.

(5) That the Committee present its findings, recommendations, and any proposed legislation to the 60th Legislature.

Adopted April 18, 2005

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR AND CONTINUED FUNDING OF AMTRAK PASSENGER RAIL SERVICE THROUGH MONTANA.

WHEREAS, Amtrak is energy-efficient and environmentally beneficial, consuming about half as much energy per passenger-mile as airlines and causing less air pollution; and

WHEREAS, Amtrak provides mobility to citizens of many smaller communities that are poorly served by air and bus service, as well as to senior citizens, persons with disabilities, students, and persons with medical conditions that prevent them from flying; and

WHEREAS, communities served by Amtrak in Montana are not provided with any other mode of public transportation, and residents of these communities are required to travel up to 200 miles to the nearest airport; and

WHEREAS, 129,044 passengers rode Amtrak across Montana in fiscal year 2004, up from 122,053 in fiscal year 2003; and

WHEREAS, Montana's tourism industry benefits from rail passenger service through the state; and

WHEREAS, Amtrak spent \$57,495 for goods and services in Montana in fiscal year 2004, up from \$19,800 in fiscal year 2003; and

WHEREAS, during fiscal year 2004, Amtrak employed 57 Montanans, who earned a total of \$3,293,052 in wages; and

WHEREAS, according to a February 6, 2005, editorial in the Great Falls Tribune, a recent national survey found that 71% of Americans believe federal subsidies of Amtrak are about right or not enough; and

WHEREAS, Amtrak is vital to the economy of Montana's northern tier, as indicated by a recent study by R.L. Banks & Associates that concluded that Amtrak's Empire Builder contributes nearly \$14 million annually in economic benefits to the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 59th Montana Legislature urge Montana's Congressional Delegation to support continued Amtrak passenger rail service through Montana.

BE IT FURTHER RESOLVED, that the 59th Montana Legislature urge the President and the United States Congress to include funding for Amtrak in any spending plan that is adopted.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Montana's Congressional Delegation.

Adopted April 1, 2005

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO PASS A WELL-FUNDED, MULTIYEAR FEDERAL HIGHWAY PROGRAM IN A TIMELY MANNER WHILE ALSO PROTECTING MONTANA'S INTERESTS.

WHEREAS, a well-funded federal highway program is important to the economy and quality of life in Montana, creating and maintaining jobs for Montanans, facilitating commerce in Montana, and enabling Montanans to travel safely to school, work, hospitals, stores, places of recreation, and other destinations that are important to a high quality of life; and

WHEREAS, Congress has not yet enacted legislation providing for a multiyear reauthorization of the federal highway program, hampering the ability of the state to deliver needed highway improvements to the citizens of Montana; and

WHEREAS, Montana has a vast and extensive highway system that serves national as well as state transportation needs, and Montana has very few citizens to finance the highway systems' maintenance and improvement, and it is essential that Montana's position in the federal highway program be perpetuated in the reauthorization.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature strongly supports prompt enactment of a well-funded, multiyear federal highway program that includes a highway funding formula that is at least as favorable to Montana's share of the program as the formula in the most recent multiyear federal highway legislation.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AFFIRMING THE LEGISLATURE'S DESIRE TO BE CONSULTED ON THE PROVISIONS OF INTERNATIONAL TRADE AGREEMENTS; AND REQUESTING MONTANA'S CONGRESSIONAL DELEGATION TO PROMOTE PROTECTIONS FOR MONTANA AND THE BEST INTERESTS OF MONTANA IN THE NEGOTIATION OF THESE AGREEMENTS.

WHEREAS, the Constitution of the United States of America reserves powers to the states that it does not grant to the nation and local governments also have autonomy over those powers not reserved to the state under the Montana Constitution; and

WHEREAS, existing trade agreements, such as the North American Free Trade Agreement (NAFTA), and proposed agreements, such as the Free Trade Area of the Americas (FTAA) and the Central American Free Trade Agreement

(CAFTA), grant powers that affect lawmaking authority of state and local governments but do not require a supermajority vote of the U.S. Senate to ratify and cannot be amended as is the case with treaties before the U.S. Senate; and

WHEREAS, NAFTA and CAFTA enable individual foreign investors to sue governments for expropriation of profits, giving individual foreign investors greater rights in the United States than are granted to United States citizens by the Constitution; and

WHEREAS, trade negotiations under the General Agreement on Trade in Services (GATS) could affect Montana's ability to operate or regulate electricity, prescription drug programs, insurance, higher education, water resources, and other essential services; and

WHEREAS, the National Conference of State Legislatures, the International Municipal Lawyers Association, the National Association of Counties, the National Association of Attorneys General, and various state legislators from Idaho and California have sent letters to the U.S. Trade Representative expressing these concerns and have received little response; and

WHEREAS, these agreements might compromise the sovereignty and economic well-being of the State of Montana because:

(1) a NAFTA tribunal has held that Canadian softwood imports do not pose a threat of injury to U.S. producers;

(2) the Economic Policy Institute has determined that 1,700 Montana jobs have been lost because of NAFTA;

(3) the viability of Montana's agricultural economy and family farms and ranches are compromised by excessive competition from low-priced imported agricultural products; and

(4) Montana's energy laws concerning a default supplier, quotas from renewable energy sources and preferential tax treatments given to those energy sources, and preferential treatment to in-state providers of electrical generation and regulation of energy contracts may not comport with U.S. trade commitments to "open markets";

WHEREAS, these international agreements might affect the ability of Montana to regulate its oil and gas royalties and use purchase preferences in Montana's procurement laws; and

WHEREAS, the U.S. Trade Ambassador's State Point of Contact has failed to create a clearly marked channel for two-way communications as it was meant to; and

WHEREAS, Montanans are committed and prepared to treat foreign firms that do business in Montana in a nondiscriminatory fashion under a standard based on the Commerce and Foreign Commerce Clauses of the U.S. Constitution, yet Montanans are neither prepared nor willing to accept a challenge to their sovereignty based on an arbitrary and unreasonable standard of discrimination.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be requested to take steps to ensure that:

(1) the Montana Legislature and other state legislatures are consulted by the United States Trade Representative before commitments are made to specific provisions in trade agreements; and

(2) legislation implementing any new trade or investment accord include appropriate protections for the states from federal lawsuits enforcing these agreements.

BE IT FURTHER RESOLVED, that Montana's Congressional Delegation is urged to defend the best interests of the State of Montana and Montana's local governments, the United States government, and the Constitution rather than the rights of foreign investors when voting on the ratification of any trade agreements.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor of the State of Montana, Montana's Congressional Delegation, the United States Trade Representative, and the President of the United States.

Adopted April 2, 2005

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE CONTRIBUTIONS OF ROTARY INTERNATIONAL AND DESIGNATING FEBRUARY 23, 2005, AS ROTARY DAY IN MONTANA.

WHEREAS, the Rotary Club of Chicago was founded on February 23, 1905, when Chicago attorney Paul Harris invited three business associates to a meeting to form a club to share "mutual cooperation and informal friendship such as all of us had once known in our villages"; and

WHEREAS, by 1921, Rotary Clubs had been formed on six continents, and the name Rotary International was adopted in 1922; and

WHEREAS, as Rotary International grew, its focus changed from serving the business and professional needs of its members to serving communities in need, as expressed in its motto "Service Above Self"; and

WHEREAS, the Rotary Foundation, established in 1928, today garners contributions exceeding \$80 million annually to support a range of humanitarian grants and educational programs; and

WHEREAS, in 1985, Rotary International made a commitment to immunize all of the world's children against polio, and by the centennial of Rotary in 2005, more than \$500 million will have been earmarked for the eradication of polio; and

WHEREAS, Rotary International is approaching its 100th anniversary and consists of 1.2 million members in some 31,000 Rotary Clubs in 166 countries, all committed to addressing such problems as environmental degradation, illiteracy, world hunger, and children at risk.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature designate February 23, 2005, as Rotary Day in Montana in honor of the numerous and ongoing contributions of Rotary

International to communities throughout the State of Montana, across the nation, and around the world.

BE IT FURTHER RESOLVED, that the Secretary of State transmit a copy of this resolution to Glenn E. Estess, president of Rotary International, so that members of Rotary International may be apprised of the sense of the Montana Legislature in this matter.

BE IT FURTHER RESOLVED, that the Legislative Services Division post the designation of this day on the Montana Legislature's website.

Adopted April 4, 2005

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR CREATING A CENTER FOR THE STUDY AND TREATMENT OF ASBESTOS-RELATED ILLNESS AND FOR PROVIDING RELIEF FOR THE VICTIMS OF ASBESTOS EXPOSURE IN LIBBY, MONTANA.

WHEREAS, the discovery, on a nationwide basis, of the often terminal effects of asbestos exposure has spawned a massive and still growing civil litigation industry; and

WHEREAS, the United States Supreme Court has repeatedly called upon Congress to resolve the national asbestos litigation issue; and

WHEREAS, United States Senate Judiciary Committee Chairman Arlen Specter has under consideration a provision to help resolve the impasse; and

WHEREAS, in the small community of Libby, Montana, many residents have already succumbed to asbestosis and hundreds more have been diagnosed with the disease; and

WHEREAS, the unique nature of the tremolite fibers found in the vermiculite processed at the W.R. Grace zonolite mine at Libby may cause symptoms to be masked for 20 or more years before a diagnosis can be made; and

WHEREAS, there is currently no cure for either asbestosis or mesothelioma and it is likely that other incurable, autoimmune diseases, including rheumatoid arthritis and lupus, will be found to be linked to tremolite asbestos exposure; and

WHEREAS, current events relative to the W.R. Grace Company seemingly eliminate any access to a remedy against that company for the Libby victims' exposure to asbestos contamination; and

WHEREAS, the compensation measure under consideration by the United States Senate appears to be the last resort for many victims of asbestos exposure; and

WHEREAS, the Lincoln County Health Board, of necessity, has appealed to the Montana Legislature for a modest amount of funding to meet the bare necessities of treating asbestos-related illnesses for the biennium beginning July 1, 2005; and

WHEREAS, in 2003, the Legislature passed House Joint Resolution No. 14, requesting the Montana Congressional Delegation to pursue funding options from federal sources to develop, build, and maintain, in Libby, Montana, a

center for the study of asbestos issues and the treatment of illnesses related to tremolite-series asbestos.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature formally reaffirms the request made in 2003 to Montana's Congressional Delegation to take action in creating a center for the study and treatment of illnesses related to tremolite-series asbestos.

BE IT FURTHER RESOLVED, that under the terms of the asbestos compensation settlement legislation before Congress, special consideration be extended to litigants who have been exposed to the tremolite-fiber asbestos, the symptoms of which take much longer to manifest themselves.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, to the members of the United States Senate Judiciary Committee, and to the members of the Montana Congressional Delegation.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO OPPOSE FEDERAL ASBESTOS LEGISLATION THAT WOULD PAY COMPENSATION TO VICTIMS OF ASBESTOS-RELATED DISEASES UNLESS THE LEGISLATION ENSURES THAT THE RESIDENTS OF LIBBY, MONTANA, WHO SUFFER FROM ASBESTOS-RELATED DISEASES ARE INCLUDED WITHIN THE TERMS OF THE LEGISLATION AND RECEIVE THE COMPENSATION THAT THEY NEED AND DESERVE.

WHEREAS, a screening conducted by the U.S. Agency for Toxic Substances and Disease Registry in the year 2000 determined that over 1,100 individuals who had lived in Libby, Montana, for at least 6 months prior to 1991 had abnormalities shown on x-ray films or spirometry that were indicative of adverse exposure to asbestos; and

WHEREAS, although medical research on Libby tremolite asbestos disease is still ongoing and publication of articles fully describing Libby tremolite asbestos disease is still a number of years away, present research does establish that at least 76% of those suffering from Libby tremolite asbestos disease will unfortunately progress from mild to more severe forms of the disease; and

WHEREAS, over 200 individuals are already reported to have died from Libby tremolite asbestos-related disease and many more are expected to die of the disease; and

WHEREAS, the people of Libby are afflicted with tremolite asbestos disease, which resulted from exposure to mining activities by W.R. Grace; and

WHEREAS, hundreds of civil lawsuits were filed in Montana courts seeking to hold W.R. Grace accountable for the injuries and deaths, which resulted from tremolite asbestos exposure; and

WHEREAS, W.R. Grace filed for bankruptcy protection on April 2, 2001, thereby terminating prosecution of the civil suits in Montana courts; and

WHEREAS, W.R. Grace is expected to pay from \$1.5 billion to \$2 billion for all its asbestos liabilities in the bankruptcy proceeding; and

WHEREAS, federal asbestos legislation has been introduced in the U.S. Congress by Senate Judiciary Committee Chairman Arlen Specter that will preempt all claims by Libby asbestos victims against W.R. Grace and all other potential defendants; and

WHEREAS, the legislation would create a \$140 billion asbestos trust fund from which to pay compensation to asbestos victims other than through the judicial system; and

WHEREAS, the federal asbestos legislation as presently drafted excludes Libby tremolite asbestos victims from those who would be compensated from the trust fund for two reasons, those being that the vast majority of Libby claimants have pleural disease caused by tremolite asbestos, not interstitial disease caused by the far more common chrysotile asbestos, and because the medical criteria for compensation in the federal legislation are based on chrysotile asbestos-induced disease; and

WHEREAS, physicians who are familiar with and who have treated hundreds of Libby tremolite asbestos disease patients have carefully reviewed the criteria in the bill and do not believe that Libby tremolite asbestos disease is covered by the bill; and

WHEREAS, the present value of all W.R. Grace's contributions under the federal asbestos legislation amounts to \$424 million, which is a small percentage of the amount that W.R. Grace would have to pay for its asbestos liabilities absent the federal asbestos legislation; and

WHEREAS, the principles of fundamental fairness and decency require that no further harm be done to those suffering from Libby tremolite asbestos disease through the passage of federal asbestos legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urge the Montana Congressional Delegation to oppose any federal asbestos legislation that reduces the amount of compensation that Libby tremolite asbestos disease victims would otherwise receive.

BE IT FURTHER RESOLVED, that in the event that federal asbestos legislation is passed, the Legislature urge the Montana Congressional Delegation to ensure that those suffering from Libby tremolite asbestos disease are covered by the legislation and get the compensation that they need and deserve.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, to the members of the Montana Congressional Delegation, and to all other members of the U.S. Congress.

Adopted April 6, 2005

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ACKNOWLEDGING THE PLANNED FORMATION OF A STATEWIDE TASK FORCE ON PAIN

AND SYMPTOM MANAGEMENT; RECOGNIZING THE ROLE THAT WILL BE PLAYED IN THE PRIVATE FUNDING AND ADMINISTRATIVE SUPPORT OF THE TASK FORCE BY THE AMERICAN CANCER SOCIETY; AND ENCOURAGING THE WIDEST POSSIBLE DISSEMINATION OF THE REPORT AND RECOMMENDATIONS OF THE TASK FORCE IN ORDER TO ENSURE ITS ACCEPTANCE AND IMPLEMENTATION BY PRIVATE HEALTH CARE PROFESSIONALS AND PUBLIC POLICYMAKERS.

WHEREAS, inadequate pain relief is a serious public health problem in the United States, inasmuch as the American Pain Foundation has estimated that 50 million people suffer from persistent pain; and

WHEREAS, pain is associated with lost wages and loss of productivity by American workers; and

WHEREAS, many factors contribute to uncured or inadequately managed pain; and

WHEREAS, all individuals with pain would benefit from having their pain thoroughly assessed and promptly treated; and

WHEREAS, pain is often accompanied by other symptoms that need to be managed along with the pain, including other symptoms arising in cancer patients; and

WHEREAS, appropriate application of excellent pain and symptom management practices, including the use of different treatment modalities, improves the quality of life for those who suffer from pain while reducing the morbidity and cost associated with untreated or inappropriately treated pain; and

WHEREAS, no Montana state agency has been given the mandate to address untreated pain and lack of symptom management as a public health problem; and

WHEREAS, there has been no comprehensive study in Montana of the prevalence of intractable pain in Montanans, nor has there been an assessment of the pain and symptom management practices of Montana health care professionals; and

WHEREAS, private funding may be available from the American Cancer Society and other interested groups to support participation in, staffing, management, and coordination of a statewide pain and symptom management study; and

WHEREAS, the study would be conducted by an advisory task force made up of over 20 members from public agencies and private organizations and individuals with experience in or a demonstrated interest in pain and symptom management issues, including representatives of the Montana Department of Public Health and Human Services, charitable societies, physicians, other health care providers, legislators, public assistance providers, advocates for voluntary health organizations, and individuals suffering from acute or chronic pain; and

WHEREAS, those public agencies, private organizations, and individuals have agreed to serve on the task force without cost to the state, which is of significance because many of the benefits resulting from the task force will be benefits to public policymakers and state agencies; and

WHEREAS, it is the intention of those who will participate on the task force to hold public hearings to gather information from the public on issues

pertaining to pain and symptom management and to then provide advice and recommendations to appropriate public and private entities on pain and symptom management, including advice and recommendations concerning acute and chronic pain and symptom management treatment practices, state statutes and rules regarding pain and symptom management, and use of alternative therapies for pain and symptom management; and

WHEREAS, it is also the intention of those who will participate on the task force to provide advice and recommendations to appropriate public and private entities on acute and chronic pain and symptom management education provided by professional boards or others in the state, acute and chronic pain and symptom management needs of adults, children, and racial and ethnic minority and medically underserved populations, development of a drug repository for unused drugs used for pain and symptom management, and treatment of pain at the end of life; and

WHEREAS, it is also the intention of those who will participate on the task force to study and develop recommendations to state licensing boards on integrating pain and symptom management into the customary practice of health care professionals and identifying the roles and responsibilities of the various health care professionals in pain and symptom management and on the duration and content of continuing education requirements for pain and symptom management, on improving access to pain and symptom management in racial and ethnic minority and medically underserved populations, including the elderly population, and on improving access to pain and symptom management for children and adolescents; and

WHEREAS, it is also the intention of those who will participate on the task force to report on the activities of the task force and make recommendations to the Governor, the Legislature, and the Director of the Department of Public Health and Human Services; and

WHEREAS, it is also the intention of those entities who will serve on the task force, in making the task force's reports and recommendations, to consult with additional entities, including academic institutions, voluntary health organizations not represented on the task force, advocates, consumers, relevant professional organizations, and other appropriate entities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the American Cancer Society be thanked and congratulated for its support of such a large undertaking as the planned task force on pain and symptom management.

BE IT FURTHER RESOLVED, that the Legislature encourages all of those public and private organizations and private individuals who have agreed to send members to or serve on the task force to participate to the fullest extent possible.

BE IT FURTHER RESOLVED, that the Legislature thanks all of those organizations and individuals especially because the members of the task force will serve without public compensation.

BE IT FURTHER RESOLVED, that the American Cancer Society and the leadership of the task force are encouraged to give the task force's report and recommendations the widest circulation practicable so that implementation of the recommendations made by the task force become a collaborative effort

between public and private bodies and organizations with the most influence on privately furnished health care and on public policy.

BE IT FURTHER RESOLVED, that the Legislature looks forward to receiving the report and recommendations of the task force and implementation of the recommendations made by the task force because implementation will be important to the lives of those many Montanans suffering from acute or chronic pain whose enjoyment of life has been reduced by pain that has not been cured or effectively managed.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor and the Montana Congressional Delegation.

Adopted April 15, 2005

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING JUNE 26, 2005, AS MONTANA MINERS' DAY.

WHEREAS, the first wave of miners came to Montana in 1862; and

WHEREAS, these miners came to Montana with a determination to succeed; and

WHEREAS, these miners did succeed and as a result helped establish churches, schools, towns, and cities that led to Montana's statehood in 1889; and

WHEREAS, these miners understood the importance of family, community, work ethic, and sacrifice that enabled their descendants to live in Montana; and

WHEREAS, Montanans of mining heritage have made and continue to make contributions to the culture and economy of Montana; and

WHEREAS, generations of Montana miners have left a lasting imprint on Montana history and heritage; and

WHEREAS, entities throughout the state have been dedicated to the preservation of the memory of miners, providing the citizens of Montana with inspiring examples of perseverance, sacrifice, and a sense of community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That June 26, 2005, be designated as Montana Miners' Day.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the town of Philipsburg in Granite County.

Adopted April 15, 2005

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO MAINTAIN THE INTEGRITY OF THE MEDICAID PROGRAM AND TO NOT SUPPORT THE PROPOSED PROGRAM REDUCTIONS INCLUDED IN THE EXECUTIVE BUDGET REQUEST TO CONGRESS.

WHEREAS, Medicaid programs provide a very basic component of the safety net for many Montanans; and

WHEREAS, Medicaid programs support the disabled, elderly, children, and pregnant women and the poorest of the poor; and

WHEREAS, proposed federal Medicaid cuts could harm a great many vulnerable Montanans who could suffer devastating health and economic consequences as a result of federal Medicaid cuts; and

WHEREAS, per capita incomes in Montana are proportionally lower than the national average, and a large number of Montanans rely on Medicaid programs; and

WHEREAS, Montana eligibility standards for Medicaid programs are at or near federally required minimum eligibility standards; and

WHEREAS, Montana is a rural state with a very low population density throughout most of the state, and the public Medicaid health system helps ensure that services are available statewide for all persons; and

WHEREAS, local governments do not have enough surplus funds to offset Medicaid funding reductions for local nursing homes and hospitals; and

WHEREAS, Medicaid is a vital component of the health care industry in Montana, representing 17% of the total health care spending in Montana; and

WHEREAS, Montana has made diligent efforts to comply with the letter and spirit of federal Medicaid regulations, especially regarding intergovernmental transfers and provider taxes used as state matching funds; and

WHEREAS, Medicaid health care spending in Montana directly supports 9,172 jobs generating \$267 million in income and indirectly creates 13,469 jobs generating \$375 million in income; and

WHEREAS, for every \$1 million cut in federal Medicaid funding, Montana loses \$4.9 million, which equates to 64 jobs; and

WHEREAS, proposed federal reductions in Medicaid spending, while appearing to be small in percentage, would have drastic effects on the Montana economy; and

WHEREAS, per capita incomes in Montana are proportionally lower than the national average and a large number of Montanans are dependent on Medicaid programs; and

WHEREAS, Montana eligibility standards for Medicaid programs are at or near federally required minimum eligibility standards.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Congressional Delegation vigorously oppose the proposed Medicaid cuts included in the federal budget proposal.

BE IT FURTHER RESOLVED, that the Governor and the Governor's staff, the Department of Public Health and Human Services, and legislative staff provide information and support to the Montana Congressional Delegation in its work on behalf of maintaining the Medicaid program.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States and the Montana Congressional Delegation.

Adopted April 12, 2005

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT PROPOSALS TO TRANSITION THE BONNEVILLE POWER ADMINISTRATION FROM COST-BASED RATES TO MARKET-BASED RATES AND ACCELERATE THE BONNEVILLE POWER ADMINISTRATION'S DEBT REPAYMENT TO THE UNITED STATES TREASURY, AS EXPRESSED IN THE PRESIDENT'S FISCAL YEAR 2006 PROPOSED BUDGET, BE REJECTED.

WHEREAS, the Bonneville Power Administration supplies over 25% of the electrical power consumed in the State of Montana; and

WHEREAS, currently and since its creation, the rates established for this power have been based upon recovery of costs; and

WHEREAS, the Pacific Northwest Region has experienced a nearly 50% increase in wholesale power rates since the energy crisis of 2001-2002; and

WHEREAS, the President's proposed fiscal year 2006 budget would transition the Bonneville Power Administration from cost-based rates to market-based rates; and

WHEREAS, the Office of Management and Budget has estimated that this change would result in an estimated increase of \$100 a year for each ratepayer in the Pacific Northwest; and

WHEREAS, the Northwest Power and Conservation Council has found that this change would cause the Bonneville Power Administration's power rates to increase by 65%; and

WHEREAS, the Northwest Power and Conservation Council has found that this budget proposal would cost the ratepayers of the Pacific Northwest Region about \$1.33 billion over 3 years and would result in a more than \$300 million decrease in state and federal personal income tax receipts; and

WHEREAS, the argument to justify these increased rates, that the ratepayers of the Pacific Northwest are being subsidized by the federal government, is not well-founded in light of the fact that all of the Bonneville Power Administration's costs, including repayment of debt at market-based interest rates to the United States Treasury, are recovered from ratepayers, primarily individuals and businesses in the Pacific Northwest; and

WHEREAS, the argument to justify these increased rates, that of accelerating the Bonneville Power Administration's debt repayment to the United States Treasury, is not well-founded in light of the Bonneville Power Administration's success in recent years of early repayment of its debt, despite the sale of power at-cost and during difficult economic times; and

WHEREAS, this proposal, if enacted, would essentially result in a 100% increase in power rates over a 7-year period, which will severely harm the region's businesses and industries, as well as all the residents of the region; and

WHEREAS, the President's additional budget proposal to increase the types of transactions that would count against the Bonneville Power Administration's authorized debt limit would negatively impact the Bonneville Power Administration's ability to upgrade existing infrastructure or build new vital infrastructure; and

WHEREAS, this proposal would lead to further limiting investment in an already constrained transmission system, which could result in electricity shortages and decreased reliability.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the proposal to transition the Bonneville Power Administration from cost-based rates to market-based rates, as expressed in the President's fiscal year 2006 proposed budget, be rejected.

(2) That the proposal to include additional transactions in the Bonneville Power Administration's authorized debt limit be rejected.

(3) That the Secretary of State send copies of this resolution to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, the Montana Congressional Delegation, and the Secretary of the United States Department of Energy, Samuel W. Bodman.

Adopted April 16, 2005

SENATE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY METHODS TO INCREASE THE RESPONSIVENESS, EFFECTIVENESS, AND EFFICIENCIES OF PROFESSIONAL AND OCCUPATIONAL BOARDS AND PROGRAMS DEDICATED TO PUBLIC SERVICE IN MONTANA AND TO PROVIDE RECOMMENDED POLICIES FOR CREATION OF NEW BOARDS, BOARD RULEMAKING, AND BOARD ACCOUNTABILITY.

WHEREAS, Montana has 32 professional and occupational licensing boards administratively attached to the Department of Labor and Industry and other regulatory boards attached to other departments, some of which have similar areas of jurisdiction, which occasionally results in jurisdictional conflicts and lack of mission clarity; and

WHEREAS, the 58th Montana Legislature called for limited-scope performance audits of the operations of professional and occupational licensing boards, which resulted in legislation in the 59th Legislature to clarify jurisdiction between the boards and the department to which they are attached but which did not address policies related to both board and department accountability to legislative intent, especially as accountability relates to public safety and protection; and

WHEREAS, the continuing growth of the service industry in Montana has resulted in requests for recognition of professional and occupational status through licensing programs with a resulting expansion of state regulatory authority funded primarily through costs assessed to those being licensed and regulated; and

WHEREAS, the Legislature may assign rulemaking authority to boards that operate autonomously in implementing legislative directives, with limited, inconsistent oversight by legislative committees and limited oversight by the

department to which the board is assigned, sometimes resulting in rules that appear contrary to legislative intent; and

WHEREAS, tension may exist between the role of board members who are knowledgeable about their profession or occupation, which is necessary for rulemaking and regulation of the profession or occupation, and the role of board members in licensing new members who may increase competition within the profession or occupation; and

WHEREAS, appropriate consolidation of boards and revised oversight responsibilities may result in increased efficiencies, effectiveness, and oversight.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety and to study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety.

BE IT FURTHER RESOLVED, that the study address the tensions created by jurisdictional disputes between boards and seek ways to resolve these disputes through consolidation, more specific delineation of authority, or other alternatives.

BE IT FURTHER RESOLVED, that the study address for each board created by the Legislature the balance of professional and occupational membership to public interest membership and whether changing the board membership would improve public protection, which is the basic rationale for the state's regulation of boards.

BE IT FURTHER RESOLVED, that the study address the role of a board's rulemaking authority and the oversight of a board's rulemaking to determine what policies may be necessary to improve implementation of legislative intent and the degree and the extent of the delegation of rulemaking authority to boards rather than to a department.

BE IT FURTHER RESOLVED, that the study provide policy considerations for the Legislature to use in reviewing creation of new boards.

BE IT FURTHER RESOLVED, that the appropriate interim committee or staff work with board members, interested parties, and the affiliated departments to include the broadest perspectives during the implementation of this study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

SENATE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE THE POTENTIAL BENEFITS OF, AND OBSTACLES TO, EXPANDING DISTRIBUTED ENERGY GENERATION IN MONTANA.

WHEREAS, Montana citizens and lawmakers have become very interested in renewable and other small-scale distributed generation systems since the electrical energy crisis in the summer of 2001; and

WHEREAS, distributed energy generation complements the central-station model of electricity generation and offers potential solutions to many of today's pressing energy and electric power problems, including energy price spikes, energy security concerns, power quality issues, rising energy costs, tighter emissions standards, transmission bottlenecks, and the desire for greater control over energy costs; and

WHEREAS, distributed generation might provide a more affordable alternative for adding future load to remote Montana locations than adding parallel lines over long distances; and

WHEREAS, distributed energy technologies may be used to meet baseload power, peaking power, backup power, remote power, power quality, and cooling and heating needs; and

WHEREAS, several of the emerging technologies currently being promoted and developed in Montana, such as rooftop solar arrays, small wind turbines, and fuel cells, are ideal for distributed generation; and

WHEREAS, permitting and construction of large, central power plants takes years, while small generating units can be brought online quickly; and

WHEREAS, homeowners and entrepreneurs generating more electricity than they need can net meter and sell their surplus to the grid; and

WHEREAS, an in-depth study is needed to explore any technical, market, and regulatory challenges to developing distributed generation that might exist and to inform the Legislature how these barriers might be overcome.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to explore any technical, market, and regulatory challenges to developing distributed generation that might exist and to inform the Legislature how these barriers might be overcome.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

SENATE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE CHILD PROTECTIVE SERVICES SYSTEM IN MONTANA.

WHEREAS, the child protective services system is a complex system involving children and families, schools, law enforcement, county attorneys, district courts, guardians ad litem, court-appointed special advocates, the Department of Public Health and Human Services, Indian tribes, and the federal government; and

WHEREAS, numerous federal and state audits have found many deficiencies in the system, yet changes to the system have been slow and the necessary resources to implement the changes have yet to be committed; and

WHEREAS, numerous pieces of legislation have been introduced illustrating the need for change within the child protective services system, such as legislation regarding the professionalization of social workers employed by the Department of Public Health and Human Services, the need for a child and family ombudsman, the need for adequate counsel for families in the system, the need for treatment courts, and the need for further involvement of extended families; and

WHEREAS, children and families involved in child protective services are members of communities and need community involvement outside of the department for prevention and community support may serve the best interests of the child and the child's family; and

WHEREAS, an analysis of the child protective services system that brings safety and permanency to the forefront to provide greater prevention services and community involvement is warranted.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the child protective services system in Montana.

BE IT FURTHER RESOLVED, that the committee review the entire system from the initial call regarding an allegation of abuse or neglect and the effectiveness of the centralized intake system to the availability of prevention services and mediation, the child's voice in the process, the level of desired community involvement, and the potential reallocation of resources with safety and permanency at the forefront.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 18, 2005

SENATE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY ISSUES RELATED TO IDENTITY THEFT, INCLUDING JURISDICTIONAL ISSUES REGARDING FEDERAL AND STATE AUTHORITY, THE PROSECUTION OF INTERNET CRIMES, THE ROLE OF CREDIT REPORTS AND CREDIT REPORTING AGENCIES, THE ROLE OF EDUCATION FOR BUSINESSES AND CONSUMERS, VICTIM RESTITUTION, SALES OF PERSONAL INFORMATION BY THIRD PARTIES AND DIRECT MARKETING FIRMS, AND OTHER IDENTITY THEFT ISSUES RAISED DURING THE STUDY.

WHEREAS, identity theft is increasing and affecting more Montanans, with a 2003 Federal Trade Commission survey estimating between 9 million and 10 million identity theft cases over a 1-year period nationwide, of which approximately 33,000 cases were estimated for Montana, with financial losses from identity theft estimated at \$52.6 billion nationally in 2004 by the Federal Trade Commission, and with the unknown cost of time spent in trying to prove, disprove, and rectify credit histories, which is complicated by a lack of coordination that results in Montanans having trouble finding solutions to the myriad credit, financial, and social repercussions of identity theft; and

WHEREAS, the increasing electronic compilation and linkage of data related to businesses and individuals has created increased efficiencies as well as the opportunity for identity theft that can wreak havoc on business and individual financial dealings; and

WHEREAS, the federal government and state governments seek to maintain a smoothly operating financial system while preserving business and consumer rights to protect against the improper use of their business or personal financial data; and

WHEREAS, disagreement exists regarding ownership of the information compiled on businesses and individuals, which complicates the issues raised over inaccurate or stolen identity data and the sale of information to third parties or direct marketing organizations; and

WHEREAS, the global nature of the Internet and the potential for electronic data to be shared worldwide complicate jurisdictional authority over prosecution of identity theft and restitution for victims; and

WHEREAS, government documents, trade secrets, and medical records fall under myriad disclosure or privacy laws, which further raises questions of coordination among these laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study issues related to identity theft, including how these issues are being handled at the federal level and in other states, and what public policy options the Montana Legislature might consider in response.

BE IT FURTHER RESOLVED, that the study address the scope of authority for the state to regulate access to and content of credit reports in cases of identity theft as well as the duties of credit bureaus related to identity theft reports.

BE IT FURTHER RESOLVED, that the study address issues related to consumer protection and prosecution related to identity theft as the theft involves direct marketing organizations and sales of identity theft information to third parties.

BE IT FURTHER RESOLVED, that the study address criteria for businesses to use to protect information that could be used against their Montana customers.

BE IT FURTHER RESOLVED, that the study address victim restitution and what processes might be needed to address cross-jurisdictional authority for restitution and prosecution.

BE IT FURTHER RESOLVED, that the study propose consumer education and business education measures and processes for protecting personal and business information, for dealing with promotional credit offers or "live" credit cards that, if stolen, could impact a person's credit history, and for dealing with personal and business identity theft.

BE IT FURTHER RESOLVED, that the study address the tools and training needed by law enforcement and regulators and propose policies and budgets to address these issues.

BE IT FURTHER RESOLVED, that the study review the various types of government records and the interaction between privacy and the right to know as these concepts affect the protection of identity, trade secrets, medical records, and other information regulated by privacy laws.

BE IT FURTHER RESOLVED, that the study include legislators and interested parties to address these issues and any other issues raised during the study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

SENATE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE THE POSSIBLE CREATION OF AN ONGOING ENERGY PLANNING AND COORDINATING ENTITY IN MONTANA.

WHEREAS, energy conservation and resource development are critical to Montana's future; and

WHEREAS, the cost and development of energy resources have a dramatic effect on all Montanans; and

WHEREAS, there are numerous state agencies that are involved in a variety of energy issues ranging from permitting of new plants to providing energy assistance to low-income Montanans; and

WHEREAS, there are numerous federal entities that deal with energy issues, including transmission planning, river governance, and rate regulation; and

WHEREAS, there are many local government-based initiatives, including buying pools, and groups formed to evaluate municipal ownership of transmission, distribution, and generation; and

WHEREAS, there are nonprofit and for-profit organizations engaged in a variety of issues related to energy; and

WHEREAS, there is currently no single entity based in Montana specifically dedicated to planning, analysis, and evaluation of energy issues from a broad societal perspective; and

WHEREAS, it is almost impossible to have a vision for developing resources and meeting future needs without some entity being responsible for meeting that task.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to evaluate the possible creation of an ongoing energy planning and coordinating entity in Montana specifically to include:

- (1) the potential costs and benefits of creating an energy planning and coordinating entity in the state;
- (2) the interest groups that should be engaged in the study;
- (3) the resources available and resources required for supporting an energy planning and coordinating entity; and
- (4) an examination of existing activities that could be better coordinated.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

SENATE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE DELIVERY OF PROSECUTION SERVICES AND COUNTY CIVIL LEGAL SERVICES BY COUNTY ATTORNEYS IN MONTANA.

WHEREAS, the delivery of competent, qualified, and professional prosecution services is vital to a productive and responsive criminal justice system; and

WHEREAS, prosecution services on the Justice's and District Court level and county civil legal services are now being provided by elected or appointed County Attorneys in every county in the state; and

WHEREAS, the degree of experience and training among Montana's County Attorneys varies greatly throughout the state, as do the salaries of elected County Attorneys and Deputy County Attorneys; and

WHEREAS, the State of Montana has the responsibility pursuant to section 17-7-112, MCA, to pay 50% of a County Attorney's salary, but the amount of that salary is determined by the County Compensation Board; and

WHEREAS, county government has the responsibility to fund 100% of the salary of all Deputy County Attorneys and all operational and maintenance costs of a County Attorney office; and

WHEREAS, the Attorney General's office now maintains a Prosecution Services Bureau that provides prosecution assistance on a limited basis to County Attorneys in primarily small jurisdictions; and

WHEREAS, a comprehensive legal needs study has recently been completed by the Law and Justice Interim Committee, resulting in the introduction of Senate Bill No. 146, the Montana Public Defender Act, creating a statewide public defender system to improve the delivery of indigent defense services on a statewide basis; and

WHEREAS, it is in the best interests of the people of the State of Montana to encourage and develop career County Attorneys who can provide consistent levels of prosecution services and county civil legal services throughout the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the delivery of prosecution services and county civil legal services by County Attorneys throughout Montana on the county level and to determine whether any changes may be appropriate. The study must include:

(1) a review of the various means by which prosecution services and county civil legal services are being provided by County Attorneys in Montana counties;

(2) a review of the costs associated with the provision of prosecution services and county civil legal services by County Attorneys in Montana counties;

(3) changes in state law that may be necessary to facilitate the provision of prosecution services and county civil legal services by County Attorneys throughout the state;

(4) a review of funding sources currently available to address the provision of prosecution needs and county civil legal services needs;

(5) a determination of the level of public funding required to provide consistent, uniform, and professional prosecution services to the criminal justice system and civil legal advice to elected county officials; and

(6) any other aspect of the administration of prosecution services and county civil legal services by County Attorneys for Montanans that is determined to be appropriate.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to request information and staff assistance from the Legislative Fiscal Division.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to develop a specific list of options, including an option of no action, to be considered for recommendation to the 60th Legislature.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 18, 2005

SENATE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE DEVELOPMENT OF COMMUNITY MENTAL HEALTH CRISIS RESPONSE SYSTEMS.

WHEREAS, individuals with mental illness who are in crisis need to be served with care and compassion in the least restrictive environment that protects the individual and the community; and

WHEREAS, current law requires the Department of Public Health and Human Services to establish crisis intervention programs in the community as an alternative to placement in jail; however, crisis intervention programs have not been specifically funded, made a priority, or addressed in relation to the emergency detentions at the Montana State Hospital; and

WHEREAS, counties are experiencing increasing and unpredictable precommitment costs because of mental health crises in the community; and

WHEREAS, although the Montana State Hospital has a licensed capacity of 189 beds, the average daily census for the month of March was 191 and the admission rate indicates no signs of abating; and

WHEREAS, the Department has pledged to the Joint Subcommittee on Health and Human Services and to the Joint Select Committee on Mental Health the intention to conduct a study of the entire public mental health system regarding community mental health crisis services and the Legislature has included funding for one full-time employee in fiscal year 2006 and two full-time employees in fiscal year 2007 to ensure adequate resources to plan for and implement development of those services; and

WHEREAS, it is necessary for the Legislature to monitor and provide a forum for stakeholders in the establishment of community mental health crisis services to serve those with mental illness by developing models that are flexible for both urban and rural communities and their varying levels of resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and monitor the development of community mental health crisis services across the state and to respond to any underlying issues that have prevented crisis services from being developed.

BE IT FURTHER RESOLVED, that the committee include in its study of community mental health crisis services the following subjects:

- (1) where the responsibility lies or should lie for providing mental health crisis services at the community level;
- (2) planning and development of community mental health crisis services;
- (3) what mental health crisis services should be provided at the community level;
- (4) how mental health crisis services should be provided at the community level;
- (5) what populations should be served by community mental health crisis services;
- (6) ways to encourage cooperation between and within communities in the planning, development, and provision of community mental health crisis services;
- (7) whether the provision of community mental health crisis services should be prioritized in any way;
- (8) funding and cost consideration in the provision of community mental health crisis services; and
- (9) any other subjects considered by the committee to be necessary or helpful in the provision of community mental health crisis services.

BE IT FURTHER RESOLVED, that the committee seek input and information from all of the stakeholders and work with the Department of Public Health and Human Services to identify the barriers to implementation and develop findings and recommendations for the next legislative session.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

Adopted April 19, 2005

SENATE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONVEYING THE 59TH LEGISLATURE'S HIGHEST HONOR AND DEEPEST RESPECT FOR THE SERVICE AND SACRIFICE OF MONTANA'S ARMY AND AIR NATIONAL GUARD MEMBERS WHO HAVE BEEN CALLED TO FEDERAL ACTIVE DUTY IN THE WAR ON TERROR.

WHEREAS, the Montana National Guard was first officially organized through a territorial legislative act entitled "An Act to Organize and Regulate the Militia", which was approved May 10, 1887; and

WHEREAS, since its organization, the Montana National Guard has served not only the State of Montana, but also the United States of America, when called to federal active duty service during the Spanish American War, the Mexican Border Incident of 1916, World War I, World War II, the Korean War, Operation Desert Storm, and peacekeeping missions in Bosnia; and

WHEREAS, since September 11, 2001, more than 2,300 members (or more than 65%) of the Montana National Guard, representing 20 units and detachments, have been called to federal active duty for service in 26 countries, including Iraq and Afghanistan, in the War on Terror; and

WHEREAS, ongoing federal operations involve continued deployments of Montana National Guard members at home and abroad; and

WHEREAS, the deployments since September 11, 2001, represent the largest mobilization of Montana's National Guard since World War II; and

WHEREAS, the Montana National Guard recently suffered its first combat fatality since World War II; and

WHEREAS, the service and sacrifice of Montana's National Guard members who put themselves in harm's way or give their lives in service to our nation deserve the state's highest honor and deepest respect.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's 59th Legislature convey its highest honor and deepest respect to Montana's Army and Air National Guard members for their service and sacrifice on federal active duty in the War on Terror.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each unit of the Montana National Guard.

Adopted April 19, 2005

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA
REVISING AND ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE
STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding the cards are subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ

staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by the secretary's respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

- (b) every motion, the name of the Senator presenting it, and its disposition;
 - (c) the introduction of legislation in the Senate;
 - (d) consideration of legislation subsequent to introduction;
 - (e) roll call votes;
 - (f) messages from the Governor and the House of Representatives;
 - (g) every amendment, the name of the Senator presenting it, and its disposition;
 - (h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and
 - (i) any other records the Senate directs by rule or action.
- (4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and distributed.
- (5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.
- (6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to must be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

- (a) legislators;
 - (b) legislative officers and employees whose presence is necessary for the conduct of business of the session;
 - (c) accredited members of the news media; and
 - (d) former legislators (not currently registered as lobbyists).
- (2) The President may make exceptions for visiting dignitaries.
- (3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. Materials may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

S20-80. Violation of rules. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. The Senate shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees and joint committees.

(3) The President of the Senate shall appoint all select committees, conference committees, and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

- (1) Agriculture, Livestock, and Irrigation
- (2) Business, Labor, and Economic Affairs
- (3) Education and Cultural Resources
- (4) Energy and Telecommunications
- (5) Ethics
- (6) Finance and Claims
- (7) Fish and Game
- (8) Highways and Transportation
- (9) Judiciary
- (10) Legislative Administration
- (11) Local Government
- (12) Natural Resources
- (13) Public Health, Welfare, and Safety
- (14) Rules
- (15) State Administration
- (16) Taxation

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

- (a) maintaining order within the committee room and its environs;
- (b) scheduling hearings and executive action;
- (c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and
- (d) authenticating committee reports and minutes by signing them and submitting them promptly to the Secretary of the Senate. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

S30-60. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days' notice to members of committees and the general public. However, subject to S30-120, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(7) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but may report the bill to the committee of the whole.

S30-70. Procedures. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee;

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the committee of the whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-90. Committee reports to Senate. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report unless a minority report has been submitted. A minority report is submitted after a majority report.

(2) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. The reconsideration motion must be made within 1 legislative day of the adoption of the committee report.

(3) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

(4) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

S30-100. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-110. Committee hearings. (1) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(2) A bill may be rereferred at any time before its passage.

S30-120. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance

of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

- (a) prior to the 3rd legislative day;
 - (b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing; or
 - (c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.
- (2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.
- (3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-130. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. The reports must be entered at length on the journal, unless otherwise ordered by the Senate.

S30-140. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(b) The Finance and Claims Committee may request the introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

- (a) a violation of:
 - (i) 2-2-103;
 - (ii) 2-2-104;
 - (iii) 2-2-111;
 - (iv) 2-2-112;
- (b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

- (1) bills of any subject, except appropriations;
 - (2) joint resolutions, which may:
 - (a) express desire, opinion, sympathy, or request of the Legislature;
 - (b) request an interim study by a legislative subcommittee;
 - (c) adopt or amend the joint rules;
 - (d) set salaries and other terms of employment for legislative employees;
- and
- (e) accomplish other legislative duties required by law; and
 - (3) simple resolutions, which may:
 - (a) adopt or amend Senate rules;
 - (b) provide for the internal affairs of the Senate;
 - (c) express confirmation of the Governor's appointments;
 - (d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1)

When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance. Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Governor;
- (5) messages from the House of Representatives;
- (6) motions;
- (7) first reading and commitment of bills;
- (8) second reading of bills (Committee of the Whole);
- (9) third reading of bills;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

- (a) to adjourn;
- (b) for a call of the Senate;
- (c) to recess;
- (d) question of privilege;
- (e) to lay on the table;
- (f) for the previous question;
- (g) to postpone to a certain day;
- (h) to refer or commit;
- (i) to amend; and
- (j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration.

(4) A motion or proposition on a subject different from that under consideration may not be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

- (1) to adjourn;
- (2) for a call of the Senate;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) for suspension of the rules;
- (6) to lay on the table;
- (7) for the previous question;
- (8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after the next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration. However, a motion to reconsider made after the 54th day of the session must be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. Unless the sponsor requests an opening statement beforehand, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

- (a) amend;
- (b) recommend passage or nonpassage;
- (c) recommend concurrence or nonconcurrence;
- (d) indefinitely postpone;

- (e) pass consideration;
- (f) rise;
- (g) rise and report;
- (h) rise and report progress and ask leave to sit again; or
- (i) change the order in which legislation is placed on the agenda.

S50-150. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-170. Third reading procedure. (1) All legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting — changing a vote. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

S50-210. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-220. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-230. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

- (a) received by the President;
- (b) delivered to the Secretary of the Senate;
- (c) read under Order of Business No. 4, messages from the Governor; and
- (d) referred to committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the

committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

- (1) a call of the Senate with a quorum (five Senators);
- (2) a motion to lift a call of the Senate (two-thirds of the members present and voting);
- (3) a motion to amend or suspend rules (two-thirds);
- (4) a motion to override the Governor's veto (two-thirds);
- (5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds); and

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds).

Adopted January 15, 2005

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE MONTANA DEPARTMENT OF TRANSPORTATION TO MAKE SPECIFIED IMPROVEMENTS ON THE ROAD FROM SCOBIEY TO WOLF POINT.

WHEREAS, portions of the road from Scobey to Wolf Point have had no major improvements made since 1945; and

WHEREAS, sharp turns and narrow width make portions of this road quite dangerous; and

WHEREAS, because of the closure of a local grain elevator, farmers have had to truck approximately 78 semitrailers of grain on this road each week; and

WHEREAS, this road, which was not originally engineered to support such heavy traffic, is now being even more dangerously degraded.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Department of Transportation be encouraged to improve portions of the road between Scobey and Wolf Point by widening it to meet standards for a two-lane road and reengineering it to reduce its dangerous sharp turns.

Adopted February 21, 2005

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Dr. Michael Bergkamp, Helena, Montana, appointed for a term ending September 1, 2007.

Dr. Kathleen Stevens, Billings, Montana, appointed for a term ending September 1, 2007.

Dr. Margaret Beeson, Billings, Montana, appointed for a term ending September 1, 2008.

(2) As a member of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Dr. Thomas Fullerton, Kalispell, Montana, appointed for a term ending January 1, 2007.

(3) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Charliene Staffanson, Deer Lodge, Montana, appointed for a term ending April 16, 2007.

Karen McNutt, Sidney, Montana, appointed for a term ending April 16, 2007.

Rosemary Shively, Helena, Montana, appointed for a term ending April 16, 2007.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. Robert Jestrab, Havre, Montana, appointed for a term ending March 29, 2009.

Deana Standley, Great Falls, Montana, appointed for a term ending March 29, 2009.

(5) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Steve Wilson, Helena, Montana, appointed for a term ending July 1, 2007.

Barbara Tamietti, Stockett, Montana, appointed for a term ending July 1, 2007.

Beckie Hoffman, Butte, Montana, appointed for a term ending July 1, 2007.

Paula Peterson, Belgrade, Montana, appointed for a term ending July 1, 2007.

(6) As members of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Dr. James Upchurch, Crow Agency, Montana, appointed for a term ending September 1, 2007.

Dr. Kurt Kubicka, Helena, Montana, appointed for a term ending September 1, 2008.

Dr. Dennis Salisbury, Butte, Montana, appointed for a term ending September 1, 2007.

(7) As members of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Susan Raph, Shelby, Montana, appointed for a term ending July 1, 2008.

Kathy Hayden, Missoula, Montana, appointed for a term ending July 1, 2008.

Cynthia Pike, Billings, Montana, appointed for a term ending July 1, 2007.

(8) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Lori Henderson, Havre, Montana, appointed for a term ending May 28, 2008.

Loren Hines, Butte, Montana, appointed for a term ending May 28, 2009.

(9) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Debra Ammondson, Great Falls, Montana, appointed for a term ending December 31, 2007.

(10) As members of the Board of Optometry, in accordance with section 2-15-1736, MCA:

Delores Hill, Mosby, Montana, appointed for a term ending April 3, 2007.

Dr. Larry Obie, Havre, Montana, appointed for a term ending April 3, 2007.

Dr. Douglas McBride, Billings, Montana, appointed for a term ending April 3, 2009.

(11) As members of the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Colette Bernica, Great Falls, Montana, appointed for a term ending July 1, 2008.

Jim Cloud, Stevensville, Montana, appointed for a term ending July 1, 2008.

Mark Meredith, Helena, Montana, appointed for a term ending July 1, 2009.

(12) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Dr. Paul Melvin, Great Falls, Montana, appointed for a term ending July 1, 2006.

Brenda Mahlum, Missoula, Montana, appointed for a term ending July 1, 2006.

Judy Cole, Forsyth, Montana, appointed for a term ending July 1, 2006.

Bruce Lamb, Havre, Montana, appointed for a term ending July 1, 2007.

(13) As members of the Board of Psychologists, in accordance with section 2-15-1741, MCA:

Dr. Edward Trontel, Kalispell, Montana, appointed for a term ending September 1, 2008.

Dr. George Watson, Bozeman, Montana, appointed for a term ending September 1, 2009.

Dr. Stuart Hall, Missoula, Montana, appointed for a term ending September 1, 2009.

(14) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Thomas Carter, Shelby, Montana, appointed for a term ending July 1, 2006.

Anne Delaney, Missoula, Montana, appointed for a term ending July 1, 2007.

(15) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1750, MCA:

Dr. Holly Strong, Great Falls, Montana, appointed for a term ending January 1, 2008.

Robert Kirtley, Bozeman, Montana, appointed for a term ending January 1, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Architects, in accordance with section 2-15-1761, MCA:

Mr. John Fontaine, Glasgow, Montana, appointed for a term ending March 27, 2007.

Mr. Tom Wood, Bozeman, Montana, appointed for a term ending March 27, 2007.

(2) As members of the Board of Athletics, in accordance with section 2-15-1772, MCA:

Mr. Don Vegge, Billings, Montana, appointed for a term ending April 25, 2006.

Mr. Kevin McCarl, Helena, Montana, appointed for a term ending April 25, 2007.

(3) As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Mr. Wendell Petersen, Missoula, Montana, appointed for a term ending October 1, 2008.

Ms. Darlene Battaiola, Butte, Montana, appointed for a term ending October 1, 2007.

Ms. Verna Dupuis, Bozeman, Montana, appointed for a term ending October 1, 2006.

Mr. Edward Dutton, Kalispell, Montana, appointed for a term ending October 1, 2008.

Ms. Sharon Richie, Hamilton, Montana, appointed for a term ending October 1, 2007.

Ms. Karan Charles, Miles City, Montana, appointed for a term ending October 1, 2006.

Ms. Maxine Collins, Helena, Montana, appointed for a term ending October 1, 2005.

Ms. Kordelia French, Plentywood, Montana, appointed for a term ending October 1, 2008.

Ms. Delores Lund, Plentywood, Montana, appointed for a term ending October 1, 2005.

(4) As members of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Mr. Douglas Lowry, Big Timber, Montana, appointed for a term ending July 1, 2008.

Mr. R.J. (Dick) Brown, Lewistown, Montana, appointed for a term ending July 1, 2009.

(5) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Ms. Brenda Koch, Lewistown, Montana, appointed for a term ending January 20, 2007.

Ms. Susan Austin, Kalispell, Montana, appointed for a term ending January 20, 2007.

Mr. Jay Clark, Sweetgrass, Montana, appointed for a term ending January 20, 2007.

Mr. C.A. (Al) Carruthers, Butte, Montana, appointed for a term ending January 20, 2007.

(6) As a member of the Board of Landscape Architects, in accordance with section 2-15-1762, MCA:

Mr. Carl Thuesen, Billings, Montana, appointed for a term ending July 1, 2008.

(7) As members of the Board of Outfitters, in accordance with section 2-15-1773, MCA:

Mr. Russ Smith, Philipsburg, Montana, appointed for a term ending October 1, 2006.

Mr. Craig Madsen, Great Falls, Montana, appointed for a term ending October 1, 2006.

Mr. Kelly Flynn, Townsend, Montana, appointed for a term ending October 1, 2007.

(8) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Ms. Loree Olsen, Helena, Montana, appointed for a term ending May 4, 2007.

Mr. Marc Golz, Helena, Montana, appointed for a term ending May 4, 2007.

Mr. Mike Mullowney, Absarokee, Montana, appointed for a term ending May 4, 2007.

Ms. Margie Laknar, Dillon, Montana, appointed for a term ending May 4, 2007.

Mr. Jeffrey Gruizenga, Billings, Montana, appointed for a term ending May 4, 2008.

Mr. Scott Lemert, Livingston, Montana, appointed for a term ending May 4, 2007.

(9) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1763, MCA:

Mr. James Hahn, Billings, Montana, appointed for a term ending July 1, 2007.

Mr. Vic Cundy, Bozeman, Montana, appointed for a term ending July 1, 2007.

Ms. Paulette Ferguson, Missoula, Montana, appointed for a term ending July 1, 2007.

Mr. David Gates, Butte, Montana, appointed for a term ending July 1, 2007.

(10) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Mr. Thomas Shea, Bozeman, Montana, appointed for a term ending July 1, 2008.

Mr. Rick Reisig, Great Falls, Montana, appointed for a term ending July 1, 2009.

(11) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Mr. David Heine, Kalispell, Montana, appointed for a term ending May 1, 2006.

Ms. Janeth Martin, Helena, Montana, appointed for a term ending May 1, 2006.

Mr. Tim Moore, Helena, Montana, appointed for a term ending May 1, 2007.

Ms. Jennifer Seitz, Billings, Montana, appointed for a term ending May 1, 2007.

Mr. Keith O'Reilly, Bozeman, Montana, appointed for a term ending May 1, 2007.

(12) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Mr. Mike Basile, Bozeman, Montana, appointed for a term ending May 9, 2007.

Ms. Teddye Beebe, Libby, Montana, appointed for a term ending May 9, 2007.

Ms. Marilyn Floberg, Billings, Montana, appointed for a term ending May 9, 2008.

(13) As members of the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Ms. Denise Moldroski, Livingston, Montana, appointed for a term ending July 1, 2006.

Mr. Ted Kylander, Billings, Montana, appointed for a term ending July 1, 2007.

(14) As a member of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1744, MCA:

Ms. Sherry Meador, Clancy, Montana, appointed for a term ending January 1, 2007.

(15) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Dr. Jean Lindley, Miles City, Montana, appointed for a term ending July 31, 2008.

Dr. Bruce Sorensen, Belgrade, Montana, appointed for a term ending July 31, 2009.

(16) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Mr. Russ Ritter, Helena, Montana, appointed for a term ending July 1, 2006.

Mr. Robert Gersack, Billings, Montana, appointed for a term ending July 1, 2006.

Mr. Mark Huber, Helena, Montana, appointed for a term ending July 1, 2007.

Mr. Mark Staples, Helena, Montana, appointed for a term ending July 1, 2007.

(17) As a member of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Mr. Rick Hutchinson, Black Eagle, Montana, appointed for a term ending July 1, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Jim Smitham, Butte, Montana, appointed for a term ending January 1, 2007.

(2) As members of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Larry Barbie, Hilger, Montana, appointed for a term ending April 18, 2006.

Keith Arntzen, Hilger, Montana, appointed for a term ending April 18, 2007.

(3) As members of the Hard Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Sandra Muster, Thompson Falls, Montana, appointed for a term ending January 1, 2007.

Don Kinsey, Big Timber, Montana, appointed for a term ending January 1, 2007.

(4) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Dr. Robert Greer, Bozeman, Montana, appointed for a term ending January 1, 2007.

Michael Kleese, Stevensville, Montana, appointed for a term ending January 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Mr. Cal Gilbert, Great Falls, Montana, appointed for a term ending February 1, 2011.

Ms. Gay Ann Masolo, Townsend, Montana, appointed for a term ending February 1, 2006.

(2) As members of the Burial Preservation Board, in accordance with section 22-3-804, MCA:

Mr. John Murray, Browning, Montana, appointed for a term ending August 22, 2005.

Mr. Stephen Platt, Helena, Montana, appointed for a term ending August 22, 2005.

Mr. Carl Fourstar, Poplar, Montana, appointed for a term ending August 22, 2005.

Mr. Tony Incashola, Pablo, Montana, appointed for a term ending August 22, 2005.

Dr. Randall Skelton, Missoula, Montana, appointed for a term ending August 22, 2005.

Mr. Melbert Eaglefeathers, Butte, Montana, appointed for a term ending August 22, 2005.

Mr. Mickey Nelson, Helena, Montana, appointed for a term ending August 22, 2006.

Ms. Sherri Deaver, Billings, Montana, appointed for a term ending August 22, 2006.

Mr. George Reed, Sr., Crow Agency, Montana, appointed for a term ending August 22, 2006.

Mr. Ryan Rusche, Poplar, Montana, appointed for a term ending August 22, 2006.

(3) As a member of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Cynthia Andrus, Bozeman, Montana, appointed for a term ending February 1, 2007.

(4) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Mr. William Holt, Lolo, Montana, appointed for a term ending July 1, 2008.

Dr. Thomas Foor, Missoula, Montana, appointed for a term ending July 1, 2008.

Ms. Sharon Lincoln, Billings, Montana, appointed for a term ending July 1, 2008.

Mr. Thomas Siebel, Wolf Creek, Montana, appointed for a term ending July 1, 2006.

Mr. Ed Henrich, Fairmont, Montana, appointed for a term ending July 1, 2009.

Mr. James Utterback, Helena, Montana, appointed for a term ending July 1, 2009.

Ms. Lee Rostad, Martinsdale, Montana, appointed for a term ending July 1, 2009.

(5) As members of the Preservation Review Board, in accordance with section 2-15-1512, MCA:

Mr. Robert Valach, Lewistown, Montana, appointed for a term ending October 1, 2007.

Mr. James Rea, Glasgow, Montana, appointed for a term ending October 1, 2007.

Ms. Kathy Doeden, Miles City, Montana, appointed for a term ending October 1, 2007.

Mr. Timothy Light, Kalispell, Montana, appointed for a term ending October 1, 2008.

Mr. Paul Filicetti, Missoula, Montana, appointed for a term ending October 1, 2008.

Mr. Rafael Chacon, Lolo, Montana, appointed for a term ending October 1, 2008.

(6) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Caroline Bitz, Box Elder, Montana, appointed for a term ending May 22, 2007.

Mr. Donald Allen, Billings, Montana, appointed for a term ending May 22, 2006.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Marianne Roose, Eureka, Montana, appointed for a term ending April 1, 2005.

Julie Jordan, Miles City, Montana, appointed for a term ending April 1, 2005.

Nancy Clark, Ryegate, Montana, appointed for a term ending April 1, 2005.

Verle Rademacher, White Sulphur Springs, Montana, appointed for a term ending April 1, 2005.

Curtiss Starr, Malta, Montana, appointed for a term ending April 1, 2005.

(2) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Dwight MacKay, Billings, Montana, appointed for a term ending January 1, 2007.

Bill Crismore, Libby, Montana, appointed for a term ending January 1, 2007.

(3) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Terrill Moore, Billings, Montana, appointed for a term ending January 1, 2007.

Dr. Maureen Fleming, Missoula, Montana, appointed for a term ending January 1, 2007.

Calvin Wilson, Busby, Montana, appointed for a term ending January 1, 2007.

Karen Fagg, Billings, Montana, appointed for a term ending January 1, 2007.

(4) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Darryl Dupuis, Polson, Montana, appointed for a term ending January 1, 2006.

Margaret Hall, Pablo, Montana, appointed for a term ending January 1, 2006.

(5) As a member of the Board of Personnel Appeals, in accordance with 2-15-1705, MCA:

Jack Holstrom, Helena, Montana, appointed for a term ending January 1, 2008.

(6) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1781, MCA:

Linda Sanem, Bozeman, Montana, appointed for a term ending August 1, 2006.

Mori Woods, Columbus, Montana, appointed for a term ending August 1, 2006.

Gary Gray, Great Falls, Montana, appointed for a term ending August 1, 2007.

Sheriff Cheryl Liedle, Helena, Montana, appointed for a term ending August 1, 2006.

Kevin Maddox, Billings, Montana, appointed for a term ending August 1, 2007.

(7) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Charles VanGorden, Valier, Montana, appointed for a term ending August 1, 2005.

Karen Furu, Bozeman, Montana, appointed for a term ending August 1, 2008.

Bob Pavlovich, Butte, Montana, appointed for a term ending August 1, 2007.

Harvey Rattey, Glendive, Montana, appointed for a term ending August 1, 2007.

James Heffernan, Helena, Montana, appointed for a term ending August 1, 2007.

C.E. Crookshanks, Missoula, Montana, appointed for a term ending August 1, 2007.

Edward Sperry, Stevensville, Montana, appointed for a term ending August 1, 2006.

Lloyd Jackson, Ronan, Montana, appointed for a term ending August 1, 2006.

Donald Kettner, Glendive, Montana, appointed for a term ending August 1, 2008.

(8) As Commissioner of Political Practices, in accordance with section 13-37-102, MCA:

Gordon Higgins, Helena, Montana, appointed for a term ending January 1, 2011.

(9) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Joe Roberts, Helena, Montana, appointed for a term ending January 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents of Higher Education in accordance with the provisions of section 2-15-1508, MCA:

Ms. Kala French, Kalispell, Montana, for a term ending July 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents of Higher Education in accordance with the provisions of section 2-15-1508, MCA:

Mr. Mike Foster, Billings, Montana, for a term ending February 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Nursing in accordance with the provisions of section 2-15-1734, MCA:

Ms. Roberta Threet, Clancy, Montana, for a term ending July 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 20, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of an appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Administration, in accordance with sections 2-15-111 and 2-15-1001, MCA:

Ms. Janet Kelly, Miles City, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Agriculture, in accordance with sections 2-15-111 and 2-15-3001, MCA:

Ms. Nancy Peterson, Havre, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Commerce, in accordance with sections 2-15-111 and 2-15-1801, MCA:

Mr. Anthony Preite, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Corrections, in accordance with sections 2-15-111 and 2-15-2301, MCA:

Mr. Bill Slaughter, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Environmental Quality, in accordance with sections 2-15-111 and 2-15-3501, MCA:

Mr. Richard Oppen, Lewistown, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Fish, Wildlife, and Parks, in accordance with sections 2-15-111 and 2-15-3401, MCA:

Mr. Jeff Hagener, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Labor and Industry, in accordance with sections 2-15-111 and 2-15-1701, MCA:

Mr. Keith Kelly, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Military Affairs, in accordance with sections 2-15-111 and 2-15-1201, MCA:

Major General Randall Mosley, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Natural Resources and Conservation, in accordance with sections 2-15-111 and 2-15-3301, MCA:

Ms. Mary Sexton, Choteau, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Revenue, in accordance with sections 2-15-111 and 2-15-1302, MCA:

Mr. Dan Bucks, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

As Director of the Department of Transportation, in accordance with sections 2-15-111 and 2-15-2501, MCA:

Mr. Jim Lynch, Kalispell, Montana, appointed to serve a term at the pleasure of the Governor.

As members of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Ms. Rhonda Whiting, Ronan, Montana, and Mr. Bruce Measure, Kalispell, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 20, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Public Health and Human Services, in accordance with sections 2-15-111 and 2-15-2201, MCA, Robert Wynia, M.D., Great Falls, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 24, 2005

SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA, Shane Colton, Billings, Montana, for a term ending January 1, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2005

SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of an appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Tricia McKenna, Belgrade, Montana, for a term ending January 1, 2009.

Bill Hunt, Jr., Shelby, Montana, for a term ending January 1, 2009.

Fred Leistiko, Kalispell, Montana, for a term ending January 1, 2009.

Roger Lincoln, Gildford, Montana, for a term ending January 1, 2009.

Ted Schye, Fort Peck, Montana, for a term ending January 1, 2009.

(2) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

John Williams, Colstrip, Montana, for a term ending January 1, 2009.

Dan Dutton, Belfry, Montana, for a term ending January 1, 2009.

Chad Fenner, Hardin, Montana, for a term ending January 1, 2009.

Gerald Navratil, Sidney, Montana, for a term ending January 1, 2009.

(3) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Janet Stevens-Donahue, Missoula, Montana, for a term ending January 1, 2009.

Mike Anderson, Havre, Montana, for a term ending January 1, 2009.

Shannon Augare, Browning, Montana, for a term ending January 1, 2009.

Mikie Baker-Hajek, Great Falls, Montana, for a term ending January 1, 2009.

James R. Cashell, Bozeman, Montana, for a term ending January 1, 2009.

Lyndon Erickson, Glasgow, Montana, for a term ending January 1, 2009.

Harold F. Hanser, Billings, Montana, for a term ending January 1, 2009.

Mike McGrath, Helena, Montana, for a term ending January 1, 2009.

Brad Newman, Butte, Montana, for a term ending January 1, 2009.

Jim Oppedahl, Helena, Montana, for a term ending January 1, 2007.

Godfrey Saunders, Bozeman, Montana, for a term ending January 1, 2007.

Bill Slaughter, Helena, Montana, for a term ending January 1, 2007.

Bonnie Wallem, Kalispell, Montana, for a term ending January 1, 2009.

(4) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Don Marble, Chester, Montana, for a term ending January 1, 2009.

Bill Rossbach, Missoula, Montana, for a term ending January 1, 2009.

Robin Shropshire, Helena, Montana, for a term ending January 1, 2009.

Gayle Skunk Cap, Browning, Montana, for a term ending January 1, 2009.

(5) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Jon Marchi, Polson, Montana, for a term ending January 1, 2009.

James W. (Bill) Kearns, Townsend, Montana, for a term ending January 1, 2009.

Richard King, Missoula, Montana, for a term ending January 1, 2009.

Larry Putnam, Malta, Montana, for a term ending January 1, 2009.

(6) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Steve Doherty, Great Falls, Montana, for a term ending January 1, 2009.

Vic Workman, Whitefish, Montana, for a term ending January 1, 2009.

(7) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Audrey Black Eagle, Lodge Grass, Montana, for a term ending January 1, 2009.

J.P. Crowley, Helena, Montana, for a term ending January 1, 2009.

Jeff Rupp, Bozeman, Montana, for a term ending January 1, 2009.

Elizabeth Scanlin, Red Lodge, Montana, for a term ending January 1, 2009.

(8) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Franke Wilmer, Bozeman, Montana, for a term ending January 1, 2009.

Janine Pease, Billings, Montana, for a term ending January 1, 2009.

Rabbi Allen Secher, Whitefish, Montana, for a term ending January 1, 2009.

(9) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Elouise Cobell, Browning, Montana, for a term ending January 1, 2009.

Teresa Olcott Cohea, Helena, Montana, for a term ending January 1, 2009.

Jack Prothero, Great Falls, Montana, for a term ending January 1, 2009.

James Turcott, Helena, Montana, for a term ending July 1, 2005.

(10) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Linda Nelson, Medicine Lake, Montana, for a term ending January 1, 2009.

Donald D. Bradshaw, Fort Benton, Montana, for a term ending January 1, 2009.

Wayne Smith, Valier, Montana, for a term ending January 1, 2009.

Joan Stahl, Forsyth, Montana, for a term ending January 1, 2009.

(11) As a member of the Board of Public Education, in accordance with sections 2-15-1507 and 2-15-1508, MCA:

Diane Fladmo, Missoula, Montana, for a term ending February 1, 2012.

(12) As a member of the Board of Regents of Higher Education, in accordance with sections 2-15-1506 and 2-15-1508, MCA:

Stephen M. Barrett, Bozeman, Montana, for a term ending February 1, 2012.

(13) As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

William T. Kennedy, Billings, Montana, for a term ending January 1, 2009.

Rick Griffith, Butte, Montana, for a term ending January 1, 2009.

Deb Kottel, Great Falls, Montana, for a term ending January 1, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2005

SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 31, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

(1) As a member of the State Banking Board, in accordance with section 2-15-1025, MCA:

Evelyn Casterline, Vida, Montana, for a term ending July 1, 2007.

(2) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Gary Gollehon, Brady, Montana, for a term ending April 18, 2008.

(3) As a member of the State Library Commission, in accordance with section 22-1-101, MCA:

Ron Moody, Lewistown, Montana, for a term ending March 22, 2006.

(4) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

William R. Hedstrom, Kalispell, Montana, for a term ending March 1, 2011.

Linda Nielsen, Nashua, Montana, for a term ending March 1, 2011.

Janice French, Hobson, Montana, for a term ending March 1, 2011.

(5) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Gary Parker, Fort Shaw, Montana, for a term ending January 1, 2009.

Jim Prinkki, Roberts, Montana, for a term ending January 1, 2009.

Larry Van Dyke, Manhattan, Montana, for a term ending January 1, 2009.

(6) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Tim Holmes, Helena, Montana, for a term ending February 1, 2010.

Rob Quist, Kalispell, Montana, for a term ending February 1, 2010.

Kevin Red Star, Roberts, Montana, for a term ending February 1, 2010.

Kathleen M. Schlepp, Miles City, Montana, for a term ending February 1, 2008.

Youpa Stein, Missoula, Montana, for a term ending February 1, 2010.

Wilbur Wood, Roundup, Montana, for a term ending February 1, 2010.

(7) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Vance Curtiss, Great Falls, Montana, for a term ending January 1, 2009.

Teresa McCann O'Connor, Billings, Montana, for a term ending January 1, 2009.

Melbert (Mok) Eaglefeathers, Butte, Montana, for a term ending January 1, 2009.

(8) As a member of the State Tax Appeals Board, in accordance with section 15-2-101, MCA:

Sue Bartlett, Helena, Montana, for a term ending January 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 16, 2005

SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 31, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Kristen K. Koss, Custer, Montana, for a term ending January 1, 2009.

Mary Ellen Cremer, Big Timber, Montana, for a term ending January 1, 2009.

Edward M. Tinsley, Helena, Montana, for a term ending January 1, 2009.

(2) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Elizabeth Best, Great Falls, Montana, for a term ending January 1, 2009.

Ed Logan, Billings, Montana, for a term ending January 1, 2009.

(3) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

David Alberi, Dillon, Montana, for a term ending January 1, 2009.

Allan Audet, Billings, Montana, for a term ending January 1, 2009.

Jay Reardon, Helena, Montana, for a term ending January 1, 2009.

(4) As members of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Scott Sorenson, Whitefish, Montana, for a term ending January 1, 2009.

Amy Christensen, Helena, Montana, for a term ending January 1, 2009.

(5) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1750, MCA:

Eileen Carney, Libby, Montana, for a term ending January 1, 2009.

Leonard Bates, Great Falls, Montana, for a term ending January 1, 2009.

Tony Jay Miller, Joplin, Montana, for a term ending January 1, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 16, 2005

SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 8, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Molly Danison, Missoula, Montana, for a term ending September 1, 2005.

(2) As a member of the Board of Athletics, in accordance with section 2-15-1772, MCA:

Book St. Goddard, Browning, Montana, for a term ending April 25, 2008.

(3) As a member of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Jamie Crisafulli, Glendive, Montana, for a term ending October 1, 2008.

(4) As a member of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Dr. Daniel Prideaux, Missoula, Montana, for a term ending January 1, 2008.

(5) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Marianne Roose, Libby, Montana, for a term ending April 1, 2007.

Gary MacDonald, Wolf Point, Montana, for a term ending April 1, 2007.

Milt Wester, Laurel, Montana, for a term ending April 1, 2007.

Dan Killoy, Miles City, Montana, for a term ending April 1, 2007.

Calvin J. Oraw, Sidney, Montana, for a term ending April 1, 2007.

(6) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. Paul Sims, Butte, Montana, for a term ending March 29, 2010.

Helen Waller, Circle, Montana, for a term ending March 29, 2007.

(7) As members of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Jack Fisher, Butte, Montana, for a term ending July 1, 2008.

Fred Talarico, Missoula, Montana, for a term ending July 1, 2010.

(8) As a member of the Board of Investments, in accordance with section 2-15-1808, MCA:

John Paull, Butte, Montana, for a term ending January 1, 2009.

(9) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Cindy Carrywater, Hays, Montana, for a term ending May 22, 2008.

Nora Smith, Bozeman, Montana, for a term ending May 22, 2008.

(10) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Lynn Yocom, Anaconda, Montana, for a term ending December 31, 2008.

(11) As a member of the Board of Optometry, in accordance with section 2-15-1736, MCA:

Rock Svennungsen, Shelby, Montana, for a term ending April 3, 2009.

(12) As a member of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

David Lindeen, Huntley, Montana, for a term ending May 4, 2007.

(13) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1744, MCA:

Treasa Glinnwater, Ronan, Montana, for a term ending January 1, 2009.

Henry Pretty On Top, Crow Agency, Montana, for a term ending January 1, 2009.

Linda Crummett, Billings, Montana, for a term ending January 1, 2009.

John Lynn, Missoula, Montana, for a term ending January 1, 2009.

(14) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1739, MCA:

Sharon Dinstel, Colstrip, Montana, for a term ending December 31, 2007.

Darrell Micken, Bozeman, Montana, for a term ending December 31, 2007.

James L. Sias, Ronan, Montana, for a term ending December 31, 2007.

(15) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

James Swanson, Glendive, Montana, for a term ending April 28, 2009.

Ken Johnson, Missoula, Montana, for a term ending April 28, 2009.

Lawrence Zanto, Helena, Montana, for a term ending April 28, 2009.

Jane DeBruycker, Dutton, Montana, for a term ending April 28, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2005

2004 BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 40

The 2003 Legislature submitted this proposal for a vote. It would amend Montana's Constitution to require the legislature to establish and provide a funding source for a noxious weed management trust fund. The principal would remain untouchable at 10 million dollars unless appropriated by vote of three-fourths of the members of each house of the legislature. Interest, income, and principal in excess of 10 million dollars from the trust could be expended by majority vote of both houses of the legislature to fund only the noxious weed management program.

This amendment provides constitutional protection to the current statutory weed management trust fund. It would have no additional fiscal impact to the state.

Constitutional Amendment No. 40 was approved by the following vote at the General Election held November 2, 2004:

For: 323,929

Against: 105,086

The title and text of the Amendment follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION TO CREATE A NOXIOUS WEED MANAGEMENT TRUST FUND; PROVIDING FOR THE PROTECTION OF THE TRUST IN THE AMOUNT OF \$10 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE; AND PROVIDING FOR THE APPROPRIATION OF INTEREST, INCOME, AND A PORTION OF THE PRINCIPAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Noxious weed management trust fund. (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars (\$10,000,000) unless appropriated by vote of three-fourths ($\frac{3}{4}$) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars (\$10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars (\$10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in

November 2004 by printing on the ballot the full title of this act and the following:

- ☐ FOR creating a noxious weed management trust fund and restricting its use.
- ☐ AGAINST creating a noxious weed management trust fund and restricting its use.

CONSTITUTIONAL AMENDMENT NO. 41

The 2003 Legislature submitted this proposal for a vote. It would amend the Montana Constitution by adding a provision specifically to recognize and preserve the opportunity of Montana citizens to harvest wild fish and wild game animals. The amendment specifies that this new provision does not create a right to trespass on private property or diminish any other private rights. This amendment is effective upon approval by the electorate.

Constitutional Amendment No. 41 was approved by the following vote at the General Election held November 2, 2004:

For: 345,505

Against: 83,185

The title and text of the Amendment follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

Section 2. Effective date. This amendment is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- ☐ FOR recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.
- ☐ AGAINST recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.

CONSTITUTIONAL INITIATIVE NO. 96

Montana statutes define civil marriage as between a man and a woman, and prohibit marriage between persons of the same sex. The Montana Constitution currently contains no provisions defining marriage. This initiative, effective immediately, would amend the Montana Constitution to provide that only a marriage between a man and a woman may be valid if performed in Montana, or recognized in Montana if performed in another state.

Constitutional Initiative No. 96 was approved by the following vote at the General Election held November 2, 2004:

For: 295,070

Against: 148,263

The text of the Initiative follows:

NEW SECTION. Section 1. Article XIII of The Constitution of the State of Montana is amended by adding a new section 7 that reads:

Section 7. Marriage. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

Section 2. Effective Date. This amendment is effective upon approval by the electorate.

INITIATIVE NO. 148

This initiative would allow the production, possession, and use of marijuana by patients with debilitating medical conditions. Patients could use marijuana, under medical supervision, to alleviate the symptoms of conditions including cancer, glaucoma, and HIV/AIDS, or other conditions or treatments that produce wasting, severe or chronic pain, severe nausea, seizures, severe muscle spasms, or other conditions defined by the State. A patient or the patient's caregiver could register to grow and possess limited amounts of marijuana by submitting to the State written certification by a physician that the patient has a debilitating medical condition and would benefit from using marijuana.

There would be no measurable cost to state government from the approval of this initiative.

Initiative No.148 was approved by the following vote at the General Election held November 2, 2004:

For: 276,042

Against: 170,579

The text of the Initiative follows:

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Medical Marijuana Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

- (i) cachexia or wasting syndrome;
- (ii) severe or chronic pain;
- (iii) severe nausea;
- (iv) seizures, including but not limited to seizures caused by epilepsy; or
- (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(2) "Department" means the department of public health and human services.

(3) "Marijuana" has the meaning provided in 50-32-101.

(4) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition.

(5) "Physician" means a person who is licensed under Title 37, chapter 3.

(6) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(8) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

(9) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

(10) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

NEW SECTION. Section 3. Procedures — minors — confidentiality — report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of [sections 1 through 9].

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;

(d) the name, address, and telephone number of the qualifying patient's physician; and

(e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care decisions for the minor signs and submits a written statement that:

(a) the minor's physician has explained to that minor and to the custodial parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the medical use of marijuana; and

(b) the custodial parent or legal guardian with responsibility for health care decisions for the minor:

(i) consents to the medical use of marijuana by the minor;

(ii) agrees to serve as the minor's caregiver; and

(iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver. The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of [sections 1 through 9]. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's

debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians.

NEW SECTION. Section 4. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant to [section 3] may not be arrested, prosecuted, or penalized in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana if the qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2).

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any

other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under [sections 1 through 9].

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department.

NEW SECTION. Section 5. Disclosure of confidential information relating to medical use of marijuana — penalty. (1) A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of [section 3].

(2) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 6. Limitations of medical marijuana act. (1) [Sections 1 through 9] do not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) the smoking of marijuana:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in [sections 1 through 9] may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

NEW SECTION. Section 7. Affirmative defense. Except as provided in [section 6], it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a); and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a).

NEW SECTION. Section 8. Fraudulent representation of medical use of marijuana — penalty. (1) A person commits the offense of fraudulent representation of medical use of marijuana if the person knowingly or purposely fabricates or misrepresents a registry identification card to a law enforcement officer.

(2) A person convicted of fraudulent representation of medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 9. Rulemaking — fees. The department shall adopt rules necessary for the implementation and administration of [sections 1 through 9]. The rules must address the manner in which the department will consider application for and renewals of registry identification cards for qualifying patients and caregivers. The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 9]. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income.

Section 10. Section 37-1-136, MCA, is amended to read:

“37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with [sections 1 through 9].”

Section 11. Section 45-9-101, MCA, is amended to read:

“45-9-101. Criminal distribution of dangerous drugs. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.”

Section 12. Section 45-9-102, MCA, is amended to read:

“45-9-102. Criminal possession of dangerous drugs. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal

possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(6) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 13. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute. (1) ~~A Except as provided in [sections 1 through 9],~~ a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 14. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) ~~A Except as provided in [sections 1 through 9],~~ a person commits the offense of criminal production or manufacture of dangerous drugs if the person

knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 15. Section 45-9-127, MCA, is amended to read:

"45-9-127. Carrying dangerous drugs on train — penalty. (1) ~~A Except as provided in [sections 1 through 9],~~ a person commits the offense of carrying dangerous drugs on a train in this state if ~~he~~ the person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102."

Section 16. Section 45-10-107, MCA, is amended to read:

"45-10-107. Exemptions. Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice and persons in compliance with [sections 1 through 9] are exempt from this part."

NEW SECTION. Section 17. Codification instruction. Sections 1 through 9 are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to sections 1 through 9.

NEW SECTION. Section 18. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 19. Effective date. This act is effective upon approval by the electorate.

INITIATIVE NO. 149

This initiative increases tobacco taxes by approximately 140%, to \$1.70 per pack of cigarettes, 85¢ per ounce of moist snuff, and 50% on all other tobacco products, and changes the use of these revenues. The initiative reserves approximately 45% of these revenues for: additional enrollment in the children's health insurance program; increased Medicaid services and provider rates; and, if created by the legislature, a supplemental need-based prescription drug program for certain groups, and programs to help small businesses provide employee health insurance. Remaining revenues are allocated to state veterans' nursing homes, the state building fund, and the general fund.

In fiscal year 2005 this initiative would raise \$38,400,000 for new health insurance and Medicaid initiatives, and an additional \$400,000 for state buildings and \$6,000,000 for the general fund. These revenues could decrease over time as fewer persons consume tobacco. Funding for state veterans' nursing homes would remain at \$2,000,000.

Initiative No.149 was approved by the following vote at the General Election held November 2, 2004:

For: 282,448

Against: 163,626

The text of the Initiative follows:

PREAMBLE

WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend \$216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA: That we raise the tax on cigarettes by \$1.00 per pack (from 70 cents to \$1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

SECTION 1. Section 10-2-417, MCA is amended to read:

“Section 10-2-417. Use of funds generated by taxation on cigarettes.

(1) Revenue generated by 16-11-119 and allocated to the department of public health and human services must be used to support the operation and maintenance of the Montana veterans’ homes programs or for the health and medicaid initiatives specified by [section 7].

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans’ homes or required for the health and medicaid initiatives specified by [section 7].”

SECTION 2. Section 16-11-111, MCA is amended to read:

“16-11-111. Cigarette sales tax—exemption for sale to tribal member.

(1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~70 cents~~ **\$1.70** on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to $\frac{1}{20}$ the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A

wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

SECTION 3. Section 16-11-114, MCA is amended to read:

"Section 16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) ~~1.66%~~ 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

(2) ~~1.11%~~ 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

(3) ~~0.83%~~ 0.45% for purchases in excess of 5,160 cartons in any calendar month."

SECTION 4. Section 16-11-119, MCA is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) ~~4.3%~~ 2.6% in the long-range building program account provided for in 17-7-205; ~~and~~

(c) ~~44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in [section 7]; and~~

(e)~~(d)~~ the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund."

SECTION 5. Section 16-11-202, MCA is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes – imposed on retail consumer – rate of tax. (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. A person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~25%~~ 50% of the wholesale price, to the wholesaler, of all tobacco products, other than moist snuff. The tax on moist snuff is ~~35~~ 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax."

SECTION 6. Section 16-11-206, MCA is amended to read:

"16-11-206. Wholesaler's discount – disposition of taxes. (1) The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a ~~2.5%~~ 1.50% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in [section 7].

(2) Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

New Section. Section 7. Special Revenue Fund – Health and Medicaid Initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); and

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b).

(3) This account shall be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue

in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) Until the programs or credits described in subsections 3(b) and 3(d) are established, the funding shall be used exclusively for the purposes described in subsections 3(a) and 3(c).

(5) The phrase "trended traditional level of appropriation" as used in subsection 3(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.

New Section. Section 8. Codification instruction – Section 7 is intended to be codified as part of Title 53, chapter 6 and the provisions of Title 53, chapter 6 apply to [section 7].

New Section. Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

New Section. Section 10. Effective date. This act is effective January 1, 2005.

New Section. Section 11. Applicability. This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004.

INDEX TO APPROPRIATIONS

ADMINISTRATION, DEPARTMENT OF

Capital projects, Ch. 330, Ch. 499, Ch. 560
General appropriation, Ch. 607
Labor-management training initiative, Ch. 6
Supplemental, Ch. 295, Ch. 459

AGRICULTURE, DEPARTMENT OF

Anhydrous ammonia tank locks, Ch. 334
General appropriation, Ch. 607
Supplemental, Ch. 295, Ch. 459

APPELLATE DEFENDER COMMISSION

General appropriation, Ch. 607

ATTORNEY GENERAL

Health care declaration registry and related public education program,
Ch. 447

BUDGET AND PROGRAM PLANNING, OFFICE OF

State employees pay plan, Ch. 6

CAPITAL PROJECTS, Ch. 330, Ch. 499, Ch. 560

COMMERCE, DEPARTMENT OF

General appropriation, Ch. 607
Great Plains Dinosaur Park in Malta, Ch. 485
Local government infrastructure project grants, Ch. 580
Military and national guard installations, task force to conduct mission
assessment and promotion for, Ch. 599

CONSUMER COUNSEL

General appropriation, Ch. 607
State employees pay plan, Ch. 6

CORRECTIONS, DEPARTMENT OF

Capital projects, Ch. 560
General appropriation, Ch. 607
Supplemental, Ch. 295, Ch. 459

CRIME CONTROL, DIVISION OF

General appropriation, Ch. 607

CULTURAL AND AESTHETIC PROJECTS GRANTS, Ch. 579

DEAF AND BLIND, MONTANA SCHOOL FOR THE

Braille equipment loan program and expansion of outreach program to
assist school districts, Ch. 490
Capital projects, Ch. 560
General appropriation, Ch. 607

ECONOMIC DEVELOPMENT, OFFICE OF

Workforce training grants, Ch. 170

ENVIRONMENTAL QUALITY, DEPARTMENT OF

Energy conservation projects, general obligation bond proceeds for,
Ch. 310
General appropriation, Ch. 607
Orphan share account transfers, Ch. 355
Supplemental, Ch. 459

EXECUTIVE BRANCH

- State employees pay plan, Ch. 6

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF

- Capital projects, Ch. 560
- General appropriation, Ch. 607
- Supplemental, Ch. 459

GENERAL APPROPRIATIONS ACT OF 2005, Ch. 607

GOVERNOR

- Capital projects, Ch. 560
- General appropriation, Ch. 607
- Supplemental, Ch. 295, Ch. 459

HIGHER EDUCATION, COMMISSIONER OF

- Supplemental, Ch. 459

HISTORICAL SOCIETY

- Capital projects, Ch. 499, Ch. 560
- Cultural and aesthetic projects grant, Ch. 579
- General appropriation, Ch. 607
- Supplemental, Ch. 459

JUDICIAL BRANCH

- General appropriation, Ch. 607
- State employees pay plan, Ch. 6
- Supplemental, Ch. 295, Ch. 459

JUSTICE, DEPARTMENT OF

- General appropriation, Ch. 607
- Natural resource damage assessment and litigation, reappropriation from coal severance tax permanent fund, Ch. 160
- Sexual assault forensic exams, costs of providing — to office of restorative justice, Ch. 504
- Supplemental, Ch. 295, Ch. 459

LABOR AND INDUSTRY, DEPARTMENT OF

- Catastrophically injured workers, for notification of financial assistance available to, Ch. 345
- General appropriation, Ch. 607
- Silicosis benefits, increase, Ch. 474
- Supplemental, Ch. 459

LEGISLATIVE BRANCH

- General appropriation, Ch. 607
- State employees pay plan, Ch. 6

LEGISLATIVE SERVICES DIVISION, Ch. 1

- Environmental Quality Council, for interim study by, Ch. 527

LEGISLATURE, Ch. 1

LEWIS AND CLARK BICENTENNIAL COMMISSION

- Supplemental, Ch. 459

LIVESTOCK, DEPARTMENT OF

- General appropriation, Ch. 607
- Mobile slaughter facility licensing program, implementation — restricted appropriation, Ch. 494
- Supplemental, Ch. 459

MILITARY AFFAIRS, DEPARTMENT OF

- Capital projects, Ch. 560
- General appropriation, Ch. 607
- Group life insurance premium reimbursements for national guard and reserve members, Ch. 604
- Supplemental, Ch. 459

MONTANA ARTS COUNCIL

- Cultural and aesthetic projects grants, Ch. 579
- General appropriation, Ch. 607

MONTANA CONSENSUS COUNCIL

- General appropriation, Ch. 607

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF

- Capital projects, Ch. 499, Ch. 560
- General appropriation, Ch. 607
- Reclamation and development grants program grants, Ch. 308
- Regional water authorities
 - financial assistance for regional water projects, Ch. 580
 - general obligation bond proceeds for specific authorities, Ch. 522
- Renewable resource grant and loan program grants and loans, Ch. 307, Ch. 309
- Supplemental, Ch. 295, Ch. 459

POLITICAL PRACTICES, COMMISSIONER OF

- General appropriation, Ch. 607
- Supplemental, Ch. 295

PUBLIC EDUCATION, BOARD OF

- General appropriation, Ch. 607

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF

- Asbestos disease account, Ch. 601
- Capital projects, Ch. 560
- General appropriation, Ch. 607
- Low-income energy assistance program, Ch. 439
- Medicaid services to specific children under age 19, from health and medicaid initiatives account, Ch. 502
- Montana youth leadership forum for students with disabilities including Indian students on reservations, Ch. 501
- Nursing facilities, increases in medicaid payments to, Ch. 523
- Supplemental, Ch. 295, Ch. 459

PUBLIC SERVICE COMMISSION

- General appropriation, Ch. 607

RAIL SERVICE COMPETITION COUNCIL, Ch. 605

REGENTS OF HIGHER EDUCATION, BOARD OF

- Dental school feasibility study, Ch. 339

REVENUE, DEPARTMENT OF

- General appropriation, Ch. 607
- Supplemental, Ch. 295

REVERSION, Ch. 295, Ch. 459, Ch. 579

SECRETARY OF STATE

- General appropriation, Ch. 607
- Supplemental, Ch. 459

STATE AUDITOR

General appropriation, Ch. 607

STATE LIBRARY COMMISSION

General appropriation, Ch. 607

Supplemental, Ch. 459

STATE PUBLIC DEFENDER, OFFICE OF

General appropriation, Ch. 607

STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION, Ch. 460

STATUTORY

Biodiesel distributor or retailer, refund payments for special fuel taxes paid, Ch. 525

Biodiesel producers, tax incentive payments, Ch. 524

Economic development special revenue account, Ch. 588

Highway patrol officers

retirement pension trust fund, amounts required to pay certain supplemental benefits, Ch. 464

salaries, special revenue account to partially fund, Ch. 421

Horseracing, Board of — funds collected by or on behalf of, Ch. 314

Legislative branch reserve account, Ch. 581

Montana Essential Freight Rail Act revolving loan account, Ch. 602

Motion picture and television production company tax credits, application fee, Ch. 593

State veterans' cemeteries special revenue account, Ch. 600

Tobacco product manufacturers, major litigation account funds — appropriation revised, Ch. 324

Video gambling machines, examination costs paid by manufacturer — deletion of appropriation, Ch. 327

Youth intervention and prevention account, Ch. 482

SUPERINTENDENT OF PUBLIC INSTRUCTION

General appropriation, Ch. 607

Supplemental, Ch. 295, Ch. 459

Tuition and transportation costs, Ch. 463

SUPPLEMENTAL, Ch. 295, Ch. 459

SUPREME COURT

Supplemental, Ch. 295

TECHNOLOGY, COLLEGES OF

Capital projects, Ch. 499, Ch. 560

TRANSPORTATION, DEPARTMENT OF

Capital projects, Ch. 560

General appropriation, Ch. 607

Local rail freight assistance programs, federal funds received for, Ch. 496

UNIVERSITY SYSTEM

Capital projects, Ch. 499, Ch. 560

General appropriation, Ch. 607

State employees pay plan, Ch. 6

GENERAL INDEX

- A -**ABORTION**

Physician assistant performing, prohibition removed, Ch. 519

ACCOUNTANTS

Nonresident certified public accountants, special practice permits and registration requirements, Ch. 541

ADDICTION COUNSELING AND ADDICTION COUNSELORS

Licensing requirements clarified, Ch. 126

ADMINISTRATION, DEPT OF

Appropriations, Ch. 6, Ch. 295, Ch. 330, Ch. 459, Ch. 499, Ch. 560, Ch. 607

Capitol complex grounds, maintenance — responsibility transferred to, Ch. 321

Capitol complex grounds or buildings — updating authority for placement of plaques, statues, memorials, and other items, Ch. 25

Consumer debt management services, licensing of credit counseling services — rulemaking authority, Ch. 272

Deferred deposit lenders, license and records provisions revised, Ch. 119

Director, appointment, SR 13

Loans from INTERCAP program, reauthorization, Ch. 8

Montana Land Information Act, creation and duties, Ch. 135

Montana State Hospital, construction of privately funded chapel — waiver of bidding and bonding requirements allowed, Ch. 560

Mortgage brokers, provisions revised, Ch. 136

New motor vehicle warranties, administrative and enforcement functions transferred from, Ch. 280

Telemarketing, administrative and enforcement functions transferred from, Ch. 280

Telework, adoption of policies for, Ch. 56

Title loans, personal property — license provisions revised, Ch. 120

Unfair trade practices and consumer protection laws, administrative and enforcement functions transferred from, Ch. 280

ADMINISTRATIVE PROCEDURE, CONTESTED CASES

Dispositions to be in writing, Ch. 347

Final decision, provisions revised, Ch. 571

ADMINISTRATIVE RULES

Anhydrous ammonia tank locks, rules of department of agriculture to include requirement for, Ch. 334

Economic impact statements, inclusion of providers of services under contracts with state as affected class of persons for purposes of, Ch. 265

Emergency rule may not be used to implement administrative budget reduction, Ch. 265

Legislative Energy and Telecommunications Interim Committee to have certain review functions for Public Service Commission, Ch. 221

Medicaid fraud, removing provision allowing conviction for attempting to obtain service or item not entitled to under regulation or policy not adopted as rule, Ch. 185

Secretary of state's duties, rules for administration — clarifying authority for adoption, Ch. 370

ADOPTION

- Foreign persons adopted in Montana, allowing new birth certificate to be issued regardless of citizenship, Ch. 149
- Revision of statutes in compliance with federal regulations and attorney general's opinion, Ch. 382

AERONAUTICS

- Airport affected areas, establishment, Ch. 300
- Game animals — allowing landowner's use of aircraft to protect property by driving, herding, or hazing, Ch. 211
- Yellowstone airport, beer and wine license for — seasonal restrictions removed and imposing annual fee on lessee, Ch. 293

AERONAUTICS, BOARD OF

- Appointments to, SR 16

AEROSPACE TECHNOLOGY

- Bond program, revision, Ch. 590
- Hypersonic wind tunnel in Butte, pilot-scale — urging support for, HJR 16

AGING AND AGED PERSONS

- Abuse, neglect, or exploitation — penalties revised, Ch. 429

AGRICULTURAL CHEMICAL GROUND WATER PROTECTION

- Ground water management plans, clarification when specific plans must or may be developed and implemented, Ch. 561

AGRICULTURAL COMMODITIES

- Dealers' records, time period for retention and maintenance, Ch. 131
- Licenses, revocation authorized for failure to report or pay assessments, Ch. 131
- Special fuel user's agricultural product temporary trip permit, establishment, Ch. 397

AGRICULTURE

- Agricultural research stations, state and federal, and tribal agricultural research programs — urging cooperative research efforts and sharing of educational information to facilitate ongoing research, sharing of scientists, and educational efforts in addressing critical issues, HJR 11
- Anhydrous ammonia, See ANHYDROUS AMMONIA
- Commercial feeds — licensing, registration, and inspection fee provisions revised, Ch. 37
- Farm scales, revision of provisions, Ch. 34
- Growth Through Agriculture Act, coal severance tax allocation increased, Ch. 589
- Liens, central filing system required and designating office in which to file effective financing statement, Ch. 207
- Montana Agricultural Center and Museum of the Northern Great Plains, transfer of ownership, Ch. 98
- Taxation, See TAXATION, PROPERTY
- U.S. Department of Agriculture urged to locate its rural development satellite offices in rural Montana, HJR 6

AGRICULTURE, DEPARTMENT OF

- Agricultural commodities licenses, revocation authorized for failure to report or pay assessments, Ch. 131

AGRICULTURE, DEPARTMENT OF (Continued)

- Anhydrous ammonia tank locks, administrative rules to include requirement for, Ch. 334
- Appropriations, Ch. 295, Ch. 334, Ch. 459, Ch. 607
- Commercial feeds — allowing licensing, registration, and inspection fee adjustments by rule, Ch. 37
- Director, appointment, SR 13
- Ground water management plans, initiation of education programs about agricultural management to preclude need for future development of plans, Ch. 561

AIRPORT COMPATIBILITY ACT, Ch. 300

AIRPORTS AND LANDING FIELDS, See AERONAUTICS

AIR QUALITY

- Oil or gas well facilities, delaying requirement to apply for permit, Ch. 236
- Postconsumer glass in recycled material, use — permit fee credit revised, Ch. 129
- Public comment periods for certain permits, provisions revised and clarifying filing deadline for certain affidavits, Ch. 188
- Violations, administrative penalties — statute of limitations revised, Ch. 487

ALCOHOLIC BEVERAGES

- All-beverages liquor licenses, limiting transferability of location when brought to within 5 miles of a city or town because of annexation, Ch. 267
- Beer
 - brewers, importers, and wholesalers — interior advertising material to retailers, provision revised, Ch. 247
 - kegs, registration of sales and enforcement, Ch. 441
 - wholesalers, revision in number of subwarehouses allowed and provision for storage of wine by table wine distributors, Ch. 143
- Beer and wine license
 - off-premises consumption, for — facility manager's fingerprint and background check requirements removed and clarifying requirement for additional fingerprint and background checks for license, Ch. 495
 - yellowstone airport, for — seasonal restrictions removed and imposing annual fee on lessee, Ch. 293
- Beer licenses, retail — limiting transferability of location when brought to within 5 miles of a city or town because of annexation, Ch. 267
- Distillery license, provision for and providing functions that may be performed by a Montana distillery, Ch. 591
- Driving under the influence, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
- Motor vehicles, prohibiting open containers in, Ch. 348

ALTERNATIVE HEALTH CARE BOARD

- Appointments to, SR 4, SR 19

ANHYDROUS AMMONIA

- Locks on tanks — requirements for, providing violation for not installing is minor offense, and providing for tank lock program, Ch. 334

ANHYDROUS AMMONIA (Continued)

Theft for purpose of manufacturing dangerous drugs, criminal provisions provided and exceptions, Ch. 137

ANTIQUITIES

Historic sites or buildings managed by nonprofit corporations, allowing biennial review rather than quarterly audit of funds by historical society, Ch. 10

Main street program, establishment, Ch. 181

APPELLATE DEFENDER COMMISSION

Appropriation, Ch. 607

Replacement with Public Defender Commission, Ch. 449

APPELLATE DEFENDER, OFFICE OF

Establishment, Ch. 449

APPRENTICESHIP AND APPRENTICES

Wage rate for apprentices, establishment and tied to standard prevailing wage rate for construction services for prevailing wage rate district, Ch. 538

APPROPRIATIONS, See INDEX TO APPROPRIATIONS, printed separately in this volume

ARBITRATION

Deferred deposit lenders, consumer to have right of rescission and allowing arbitration clauses in loan agreements, Ch. 210

Police, strikes prohibited and providing for binding arbitration in labor negotiations, Ch. 225

State land surface leases, improvements — requiring explanation of requirements of fixing values by arbitration and changing court venue for contesting values, Ch. 476

Title loans, personal property — consumer to have right of rescission and allowing arbitration clauses in loan agreements, Ch. 210

ARCHITECTS, BOARD OF

Appointments to, SR 5

ARREST

Peace officers, quotas prohibited, Ch. 242

ARTS AND CULTURE

Cultural and aesthetic projects grant awards, Ch. 579

Miles City, designation as cultural heritage area, Ch. 497

ASBESTOS

Asbestos disease account, creation and appropriation for grants to lincoln county health board, Ch. 601

Asbestos-related illness, urging support for creating center for study and treatment and for providing relief for victims of exposure in libby, Montana, SJR 26

Federal asbestos legislation that would pay compensation to victims, urging congressional delegation to oppose unless legislation ensures that residents of libby, Montana, are included within terms of legislation and receive compensation, SJR 27

ASSISTED LIVING FACILITIES

Home and community-based services to persons living in, removing requirement for reporting costs of providing, Ch. 353

ATHLETICS, BOARD OF

Appointments to, SR 5, SR 19

Membership expanded, Ch. 126

ATTORNEY GENERAL

Appropriations, Ch. 447

City attorney, service of notice of appeal filed or received in criminal proceeding, Ch. 154

Health care declaration registry and related public education program, Ch. 447

Health entity, nonprofit — conversion to for-profit corporation or entity or mutual benefit corporation or entity, approval, Ch. 214

Military service employment rights, duties and powers specified, Ch. 381

Patriot Act, actions taken by federal government under — requesting attorney general to compile and disseminate relevant information regarding and encouraging congressional delegation to support and ensure civil rights of all citizens which includes allowing act to expire, SJR 19

Statewide water adjudication, service as intervenor, Ch. 526

Tobacco product wholesaler's license, allowing request for proceeding judicially to seek revocation for noncompliance with laws, Ch. 324

ATTORNEYS AT LAW

Annual license tax, use specified, Ch. 420

- B -

BAIL

Cash bail, forfeiture in felony case — deposit provision revised, Ch. 35

BALLOT ISSUES, See also ELECTIONS

Constitutional amendments, See CONSTITUTION OF MONTANA, AMENDMENT

State auditor, constitutional amendment to change name to insurance commissioner, Ch. 269

Voter information pamphlets, clarifying timeframe for requisition of printing and distribution, Ch. 586

BANKING BOARD, STATE

Appointments to, SR 5, SR 17

BANKS AND TRUST COMPANIES

Insurance required of borrower to maintain on loan secured by real property, amount restricted, Ch. 97

Insurer's securities, as custodian of — indemnification agreements, Ch. 109

Mortgage bankers, licensing as mortgage broker — requirements, Ch. 301

Revision of provisions generally, Ch. 15

BARBERING AND COSMETOLOGY

Temporary shop or salon operating permit, clarification of conditions for, Ch. 194

BARBERS AND COSMETOLOGISTS, BOARD OF

Appointments to, SR 5, SR 19

BASEBALL

American Legion urged to adopt a wood bat only rule for American Legion baseball, HJR 19

BIG SKY ECONOMIC DEVELOPMENT FUND AND PROGRAM, Ch. 588

BIG SKY ON THE BIG SCREEN ACT, Ch. 593

BIRTH

Birth certificates

federal legislation establishing standards for certificates issued by states, requesting congressional delegation to oppose, HR 2
foreign persons adopted in Montana, allowing new certificate to be issued regardless of citizenship, Ch. 149

Metabolism, inborn errors of — limited coverage health insurance plans to exclude coverage, Ch. 174

Newborns, surrender to emergency services providers — clarifying availability of information concerning counseling, Ch. 102

BLINDNESS OR LOW VISION, PERSONS WITH

Blind vendor vocational opportunities program extended to include military reservations, Ch. 249

Braille services and instruction for impaired children, provisions for, Ch. 490

BOATING ADVISORY COUNCIL

Certain provisions made permanent. Ch. 322

BOATS AND BOATING

Facilities, making permanent criteria for use of motorboat account funds for, Ch. 322

Fee in lieu of tax, making permanent the amount of the fine for failure to pay, Ch. 322

Registration fees, revision and clarification, Ch. 542

State recreational boating safety program, making permanent departmental authority to contract with counties for administration, Ch. 322

Validation decals for verification of use of original identifying number, provisions for, Ch. 237

BOILERS AND STEAM ENGINES

Fees for inspection and certification, increase, Ch. 68

BONDS AND BOND ISSUES

Aerospace technology bond program, revision, Ch. 590

Bond Validating Act, application extended, Ch. 9

City sidewalk, curb, gutter, or alley approach bonds — clarification of authority for issuance and authorizing pooling, Ch. 451

Coal severance tax bonds

local government infrastructure project loans at subsidized interest rate, provision eliminated, Ch. 580

renewable resource projects, issuance for, Ch. 309

County park districts, dissolution — clarifying security of bonds following, Ch. 451

BONDS AND BOND ISSUES (Continued)

Employment security building and long-range building bonds, repeal of special provisions governing, Ch. 374

Local government

revision of provisions generally and clarification of bond or grant anticipation note issuance, Ch. 451

urban highway system, issuance for construction and construction engineering phases of projects, Ch. 336

Montana Essential Freight Rail Act revolving loan account, revenue bonds to fund, Ch. 602

Municipal Finance Consolidation Act, loans to state agencies

conditions, specifying, Ch. 399

INTERCAP program, from — reauthorization, Ch. 8

Revisions for elimination of obsolete provisions and providing additional flexibility, Ch. 374

School bond issue or levy submitted to electors — including dissemination of information by trustees, school superintendent, or designated employee in district with no superintendent as “properly incidental to another activity required or authorized by law”, Ch. 437

School bond propositions, approval by majority vote — authorizing issuance of bonds upon, Ch. 503

Special improvement districts — refunding bond issuance clarified and authorization for pooling of bonds and sidewalk, curb, gutter, or alley approach bonds, Ch. 451

State general obligation bonds

capital projects, issuance for, Ch. 499

grant or revenue anticipation notes and additional uses of proceeds, issuance authorized, Ch. 323

natural resources and conservation, department of — proceeds for specific regional water authorities, Ch. 522

state building energy conservation program, to fund — authorization, Ch. 310

Transportation, Department of — equipment storage buildings, issuance of general obligation bonds to fund construction, Ch. 330

BONNEVILLE POWER ADMINISTRATION

Proposals to transition from cost-based rates to market-based rates and accelerate debt repayment, rejection urged, SJR 31

BOXING AND WRESTLING

Licensed health care professionals required for ringside attendance, expanding types, Ch. 202

BUDGET AND BUDGETING, See STATE FINANCE**BUDGET AND PROGRAM PLANNING, OFFICE OF**

Appropriation, Ch. 6

BUILDINGS AND BUILDING REGULATIONS, See also CAPITOL AND OTHER STATE BUILDINGS

Building Codes Council, appointment of licensed elevator mechanic to, Ch. 303

Construction codes — clarifying that departmental authority is applicable to plumbing, electrical, and elevator codes and making offense provisions consistent with building code, Ch. 68

BUILDINGS AND BUILDING REGULATIONS (Continued)

Energy performance contracts for local government buildings, provisions for, Ch. 162

Geothermal systems installed in residences, tax credit for persons constructing residences, Ch. 455

Historical writings or documents, display in or on public buildings — governmental authority recognized, Ch. 372

Methamphetamine lab remediation activities, establishing standards and requirements to conduct, Ch. 461

Smoking prohibited in all places where public is free to enter, Ch. 268

BURIAL PRESERVATION BOARD

Appointments to, SR 7

- C -

CANADA

Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7

Live cattle trade, resumption — urging congress to reject until Montana producers and consumers can be assured that food supply is safe from BSE and cattle industry will not be harmed, HJR 7

CANCER

Statewide Task Force on Pain and Symptom Management — formation acknowledged, recognizing role that will be played in funding and support by american cancer society, and encouraging wide dissemination of report and recommendations of task force to ensure acceptance and implementation by health care professionals and public policymakers, SJR 28

Task force on cervical cancer, creation, Ch. 404

CAPITOL AND OTHER STATE BUILDINGS, See also BUILDINGS AND BUILDING REGULATIONS

Capitol complex grounds, maintenance — responsibility transferred, Ch. 321

Employment security building and long-range building bonds, repeal of special provisions governing, Ch. 374

Energy conservation program, See ENERGY, State building energy conservation program

Placement of plaques, statues, memorials, and other items — updating departmental authority for, Ch. 25

CAPITOL RESTORATION COMMISSION

Elimination, Ch. 16

CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT, Ch. 345

CEMENT

Local zoning regulations, clarifying applicability to operations that mix concrete or batch asphalt, Ch. 340

CHAPTER NUMBER TO BILL NUMBER TABLE, See TABLE OF
CHAPTER NUMBER TO BILL NUMBER, printed separately in this
volume

CHARITIES, TAX EXEMPTIONS

Land applied for after December 31, 2004, limitation — for, Ch. 2
Property purchased for charitable use, provisions amended, Ch. 584

CHEMICAL DEPENDENCY

Drug Offender Accountability and Treatment Act, Ch. 282
Mental disorder, definition amended to specify that disorder may co-occur
with addiction or chemical dependency, Ch. 81
Public intoxication and treatment of alcoholism statutes, eliminating
requirement that police take persons into protective custody, Ch. 442
Substance abuse and especially methamphetamine use, urging continued
efforts toward intraagency and interagency prevention coordination
and support of interagency efforts to assist Montanans in need, HJR 1

CHILD ABUSE AND NEGLECT

Citizen Review Board authorized to conduct permanency hearing subject
to approval by court, Ch. 382
Extended family member's request for custody denied, family member
entitled to written statement of reasons for denial as allowed by
confidentiality laws, Ch. 178
Federal Indian Child Welfare Act, defining terms related to
implementation and clarifying role of qualified expert witness in
proceedings subject to, Ch. 349
Guardian ad litem, clarification of who may be appointed as, Ch. 382
Protective services
 emergency services, informing parent or other responsible person of
 right to have a support person present during meeting with social
 worker concerning, Ch. 422
 revision in compliance with federal regulations and attorney general's
 opinion, Ch. 382
Public defender to be assigned at beginning of any proceeding, Ch. 449
Service of process procedures revised, Ch. 118

CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP), See PUBLIC
ASSISTANCE

CHILDREN'S SERVICES

Child protective services system, requesting interim study of, SJR 37
Children's System of Care Planning Committee and a service area
 authority board, clarification of duties for delivery of mental health
 services, Ch. 200
Foster care or group homes, school tuition payment provisions, Ch. 463
Foster Care Review Committee authorized to conduct permanency
 hearing subject to approval by court, Ch. 382

CHILD SUPPORT ENFORCEMENT

IV-D programs, referrals to and from other programs — revising laws to
allow, Ch. 21
Orders, review and modification provisions, Ch. 564
Revision of provisions to improve efficiency, Ch. 431
Temporary assistance for needy families, child support pass-through
payment and income disregard, Ch. 558

CHIROPRACTORS, BOARD OF

Appointments to, SR 4, SR 19

CHURCHES

Tax exemption provisions amended and extended to educational or youth recreational facilities open to public, Ch. 584

CIGARETTES OR TOBACCO PRODUCTS

Revision of tobacco laws generally, Ch. 511

Roll-your-own tobacco, clarifying application of tobacco reserve fund laws, Ch. 324

Smoking prohibited in all places where public is free to enter, Ch. 268

Tax increase and use of revenue, Initiative No.149(Appendix)

Tobacco product manufacturers' provisions, revising laws relating to enforcement, Ch. 324

Veterans' homes, tobacco tax dedicated to operation and maintenance — clarification that revenue is restricted to that use, Ch. 481

CITIES AND TOWNS, See also LOCAL GOVERNMENT

Billings, designation of main street as richard dean roebling memorial highway, Ch. 388

Butte, pilot-scale hypersonic wind tunnel — urging support for, HJR 16

False claim against governmental entity, providing for civil action against person making, Ch. 465

Game animals — expanding power to control, remove, and restrict, Ch. 261

Impact fees, imposition and requirements, Ch. 299

Infractions, allowing violation of criminal offense under state law punishable only by fine is municipal infraction, Ch. 398

Land use construction or development project decisions, commencement of action against municipality relating to — time period for, Ch. 412

Miles City, designation as cultural heritage area, Ch. 497

Roundabouts instead of right-angle intersections, construction encouraged, HJR 12

Superfund sites, identification of sites in Montana and impacts on communities directly impacted by — interim study requested, HJR 34

Terry, designation as official home of evelyn cameron gallery, Ch. 274

Water right, nonabandonment — requirement for qualification of consideration revised and criterion for determination changed, Ch. 17

Wheelchairs, use regulation provision removed, Ch. 233

CITY ATTORNEY

Bonds for city officers and employees, approval requirement removed, Ch. 209

Criminal proceeding, notice of appeal filed or received — service upon attorney general, Ch. 154

CITY-COUNTY CONSOLIDATED GOVERNMENTS

Impact fees, imposition and requirements, Ch. 299

CITY FINANCE

Bid threshold for certain purchase and construction contracts, Ch. 192

Certificates of deposit in in-state federally insured financial institutions, investment provisions, Ch. 240

Oil and natural gas production in counties, distribution of tax funds between county and city, Ch. 603

CITY FINANCE (Continued)

- Resort tax, resort area district board election laws — revision, Ch. 393
- Sidewalk, curb, gutter, or alley approach bonds — clarification of authority for issuance, Ch. 451
- Substance abuse prevention program, voted levy authorized, Ch. 317
- Tax appeal actions, notification and appeal provisions, Ch. 533
- Water service charges, delinquent — to become liens upon property served or to be collected as debt of property owner, Ch. 451

CITY OFFICERS OR EMPLOYEES

- Bonding provisions revised, Ch. 209

CITY OR TOWN CLERK

- Bonds for city officers and employees, filing requirement removed, Ch. 209

CIVIL PROCEDURE

- Service of process provisions revised and clarification of provisions for registered process servers, Ch. 392

CLERGY

- Tax exemption provisions amended, Ch. 584

CLERK OF THE DISTRICT COURT

- Supervisory fees, collection responsibility transferred from, Ch. 473

CLINICAL LABORATORY SCIENCE PRACTITIONERS, BOARD OF

- Appointments to, SR 4

COAL BED METHANE

- Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7
- Split estates of mineral and surface owners related to oil and gas development and coal bed methane reclamation and bonding, interim study by environmental quality council, Ch. 527

COAL BOARD

- Appointments to, SR 6, SR 16

COAL TRUST FUNDS, CONSTITUTIONAL TRUST FUND

- Big sky economic development fund, creation, Ch. 588
- Coal severance tax bond fund, appropriation for debt service for coal severance tax bonds issued for renewable resource projects, Ch. 309
- Coal severance tax permanent fund, reappropriation for natural resource damage assessment and litigation, Ch. 160

CODE COMMISSIONER BILL, Ch. 130

CODE SECTIONS AFFECTED, See TABLE OF CODE SECTIONS

- AFFECTED, printed separately in this volume

COLLECTIVE BARGAINING

- Public employees, clarifying definition of “supervisory employee”, Ch. 483

COMMERCE, DEPARTMENT OF

- Appropriations, Ch. 485, Ch. 580, Ch. 599, Ch. 607
- Big sky economic development program, establishment, Ch. 588

COMMERCE, DEPARTMENT OF (Continued)

- Director, appointment, SR 13
- Great Plains Dinosaur Park in Malta, funding, Ch. 485
- Lewis and Clark bicentennial license plates, revenue allocation provisions, Ch. 223
- Local government infrastructure project grants, Ch. 580
- “Made-in-Montana” products, state’s role in promoting — clarification, Ch. 248
- Main street program, establishment, Ch. 181
- Military and national guard installations, task force to conduct mission assessment — creation and funding, Ch. 599
- Montana products, electronic directory to be provided, Ch. 173
- Motion picture and television production companies, certification of production, Ch. 593
- Primary sector business workforce training program, administration transferred to, Ch. 169
- Terry, Montana, as official home of Evelyn Cameron Gallery — designation on maps and highway signs, Ch. 274

COMMERCIAL FEEDS

- Licensing, registration, and inspection fee provisions revised, Ch. 37

COMMERCIAL FERTILIZERS, See ANHYDROUS AMMONIA

COMMUNITY COLLEGES

- Tribally controlled colleges, resident nonbeneficiary students — financial assistance provisions revised, Ch. 147

COMPUTERS, See generally INFORMATION TECHNOLOGY

CONSERVATION DISTRICTS

- Coal severance tax, allocation increased, Ch. 589

CONSERVATION EASEMENTS

- Conservation easements and property tax policy issues associated with, requesting performance audit of extent, SJR 20

CONSTITUTION OF MONTANA, AMENDMENT

- Harvest heritage, preservation, Constitutional Amendment No.41(Appendix)
- Marriage, validity or recognition, Constitutional Initiative No.96(Appendix)
- Noxious weed management trust fund, creation, Constitutional Amendment No.40(Appendix)
- State auditor, changing name to insurance commissioner, Ch. 269

CONSUMER COUNSEL

- Appropriations, Ch. 6, Ch. 607

CONSUMER DEBT MANAGEMENT SERVICES

- Licensing of credit counseling services, Ch. 272

CONSUMER LOAN BUSINESSES

- Annual reporting, eliminating certain requirements, Ch. 64
- Revising restrictions on loans and clarifying what constitutes add-on basis loan, Ch. 125

CONSUMER PROTECTION

- Gift certificates — expiration dates prohibited, associating ownership with possessor, limiting fees, and allowing limited cash redemption, Ch. 291
- Identity theft, requesting interim study of issues related to, SJR 38
- Insurance, personal — use of credit information, Ch. 363
- Prescription drug consumer information and technical assistance program and education outreach for consumers, Ch. 287

CONSUMER REPORTS AND REPORTING AGENCIES

- Consumer's credit, prohibiting agencies from providing or selling certain data pertaining to, Ch. 363
- Identity theft, provisions for prevention, Ch. 518

CONTRACTOR REGISTRATION, CONSTRUCTION CONTRACTORS

- Registration and fee provisions revised, Ch. 133

CONTRACTS

- Nonpublic construction contracts, notification of interest accrual on late construction payments — requirement eliminated and retainage amount reduced, Ch. 244
- Personal services contracts, durational limit removed, Ch. 166

CORPORATIONS, See also TAXATION, CORPORATIONS

- Health entity, conversion to for-profit corporation or entity or mutual benefit corporation or entity — regulation, Ch. 214
- Name, revising certain procedures for filing applications regarding and eliminating certain requirements regarding filing of certain copies with respect to, Ch. 71

CORRECTIONAL FACILITIES

- Military officers' commissions or warrants, vacating upon incarceration, Ch. 28
- Prerelease centers, increasing time period for contracts with department, Ch. 87
- Regional facility, requiring rules establishing per diem rate for compensation paid for confinement of persons in state portion of, Ch. 551

CORRECTIONS, DEPARTMENT OF

- Appropriations, Ch. 295, Ch. 459, Ch. 560, Ch. 607
- Correctional facilities, responsibilities, See generally **CORRECTIONAL FACILITIES**
- Director, appointment, SR 13
- Methamphetamine, residential treatment programs — contracts for establishment and maintenance and rules for, Ch. 277
- Sexual offenders designated as level 3 offenders, electronic monitoring program, Ch. 360
- Substance abuse and especially methamphetamine use, urging continued efforts toward intraagency and interagency prevention coordination and support of interagency efforts to assist Montanans in need, HJR 1
- Supervisory fees, collection responsibility transferred to, Ch. 473
- Youth court, electronic transfer of information between court and department, Ch. 423

COSMETOLOGY AND COSMETOLOGISTS

Temporary shop or salon operating permit, clarification of conditions for,
Ch. 194

COUNSELING AND COUNSELORS

Newborns, surrender to emergency services providers — clarifying
availability of information concerning counseling, Ch. 102
Publication of annual list, requirement removed, Ch. 467

COUNTIES, See also LOCAL GOVERNMENT

False claim against governmental entity, providing for civil action against
person making, Ch. 465
Impact fees, imposition and requirements, Ch. 299
Land information account, creation required, Ch. 135
Notices, legal — publication requirements revised, Ch. 444
Park districts, See PARKS AND RECREATION, County park districts
State recreational boating safety program — making permanent the
department of fish, wildlife, and parks authority to contract with
counties for administration, Ch. 322

COUNTRY OF ORIGIN PLACARDING ACT, Ch. 279**COUNTY ATTORNEY**

Bonds for county officers and employees, approval requirement removed,
Ch. 209
County civil legal services by county attorneys and prosecution services in
Montana, requesting interim study to review delivery and whether
changes may be appropriate, SJR 40
Private investigator license applications, notification requirement
removed, Ch. 126

COUNTY CLERK AND RECORDER

Bonds for county officers and employees, filing requirement removed,
Ch. 209
Election administrator, as — additional compensation, Ch. 182
Military discharge certificates inadvertently filed with, return upon
request, Ch. 165
Water right transfers, responsibilities revised, Ch. 70

COUNTY COMMISSIONERS, BOARD OF

Appointment of relatives to positions within county, exempting
commissioners of certain counties from restriction, Ch. 316
County jail work programs, allowing public projects for purposes of,
Ch. 414
Mosquito control districts, creation provisions revised, Ch. 555
Rural special improvement districts
creation and resolution provisions revised, Ch. 529
protests, restricting authority to overrule, Ch. 488

COUNTY FINANCE

All-purpose levy, restrictions removed, Ch. 453
Bentonite production tax, value for county classification purposes, Ch. 559
Certificates of deposit in in-state federally insured financial institutions,
investment provisions, Ch. 240
Marriage license fee increases, disposition for district court operations,
Ch. 114

COUNTY FINANCE (Continued)

- Mental health commitment proceedings — county responsibility for precommitment detention, examination, and treatment costs when, Ch. 480
- Metal mines license tax, allocation of funds revised, Ch. 598
- Motor fuel excise tax, local option — responsibility for collection and refund issuance transferred, Ch. 539
- Oil and natural gas production in counties, distribution of tax funds for, Ch. 603
- Oil and natural gas production taxes, clarifying distribution of allocation, Ch. 5
- Predatory animal control funds
 - interest earned on funds to be deposited in funds, Ch. 12
 - money from any source may be deposited in, Ch. 176
- Substance abuse prevention program, voted levy authorized, Ch. 317
- Taylor Grazing Act money, apportionment simplified, Ch. 53

COUNTY OFFICERS OR EMPLOYEES

- Bonding provisions revised, Ch. 209

COUNTY PRINTING, BOARD OF

- Appointments to, SR 8, SR 19

COUNTY ROADS AND BRIDGES

- Abandonment clarified for highway, road, or right-of-way that provides existing legal access to public land or public waters including access for public recreational use, Ch. 168

COUNTY SHERIFF

- Bonding provisions related to, removal, Ch. 209
- Deputy sheriff injured in performance of duty — partial payment of salary, providing for assignment to light duty, and retirement contributions to be based on total compensation, Ch. 271
- Mobile homes, abandoned — clarification of landlord's storage, sheriff's sale, and lien provisions, Ch. 90
- Name of sheriff's department changed to sheriff's office, Ch. 36

COUNTY SUPERINTENDENT OF SCHOOLS

- Bond issue or levy submitted to electors, including dissemination of information related to as “properly incidental to another activity required or authorized by law”, Ch. 437
- School tuition provisions, revision, Ch. 463

COUNTY TREASURER

- Military personnel on active duty or hospitalized for duty-related injuries or illness, delayed payment of property tax without penalty or interest — clarifying notification requirement, Ch. 587
- Motor fuel excise tax, local option — responsibility for collection and refund issuance transferred to, Ch. 539
- Motor vehicle funds transferred to state, provisions revised, Ch. 542
- School districts, cash demands — requiring minimum of 30-hour notification, Ch. 196
- Tax receipt notations by certain deadlines and demand for payment of road taxes, requirements removed and reporting deadlines changed, Ch. 189

COUNTY WATER AND/OR SEWER DISTRICTS

Revision of provisions generally, Ch. 341

COURT REPORTERS

Criminal cases, transcript fees — payment revised, Ch. 254

COURTS GENERALLY

Drug Offender Accountability and Treatment Act, Ch. 282

Information technology, surcharge for — termination removed and deposit revised, Ch. 445

Public defender system, assigned counsel services, Ch. 449

Revision of provisions generally, Ch. 557

CREDIT COUNSELING SERVICES

Licensing provisions, Ch. 272

CREDIT TRANSACTIONS

Identity theft, provisions for prevention, Ch. 518

Interest, definition revised, Ch. 125

Personal insurance, use of credit information in, Ch. 363

Tax payments or licensing fees — payment by credit card, debit card, or other commercially acceptable means allowed, Ch. 47

CRIME CONTROL, BOARD OF

Appointments to, SR 8, SR 16

Domestic violence intervention program grants, administration, Ch. 493

CRIME CONTROL, DIVISION OF

Appropriation, Ch. 607

CRIMES

Anhydrous ammonia, theft for purpose of manufacturing dangerous drugs — criminal provisions provided and exceptions, Ch. 137

Assault with bodily fluid, changing mental state element of and expanding offense to include health care providers, Ch. 292

“Child” or “children” defined for purposes of criminal laws, Ch. 364

DNA samples, all felons required to submit and authorizing use of previously collected samples, Ch. 155

Environmental violations investigation and prosecution, authority created in department of justice, Ch. 506

Health care facility access, obstruction — creating criminal provision, Ch. 331

Medicaid fraud, clarification and/or removal of provisions, Ch. 185

Methamphetamine, second or subsequent offense of possession — penalty changed, Ch. 277

Military officers’ commissions or warrants, vacating upon conviction of felony or incarceration in correctional facility, Ch. 28

Minor in possession law

information or statements provided by person under age 21 regarding alleged sexual offense against that person or person helping victim obtain medical or other assistance or reporting offense may not be used in prosecution under, Ch. 183

penalties revised, Ch. 546

Money laundering, offense created, Ch. 276

Municipal infraction, allowing that violation of criminal offense under state law punishable only by fine is infraction, Ch. 398

Partner or family member assault, See DOMESTIC VIOLENCE

CRIMES (Continued)

- Sexual abuse of children, offense revised, Ch. 364
- Sexual and violent offender registration laws, revision generally, Ch. 313
- Sexual offenders designated as level 3 offenders, electronic monitoring program, Ch. 360
- Vehicular homicide while under the influence, offense of — creation, Ch. 426

CRIME VICTIMS AND WITNESSES

- Child support or maintenance, allowing attachment of compensation for payment, Ch. 431
- Domestic and sexual violence victims' services, funding, Ch. 493
- Partner or family member assault, sexual assault, or stalking victims — program providing substitute address for official purposes, Ch. 83
- Right of victims to attend criminal proceedings, revising definition of "victim" relating to, Ch. 33
- Sexual assault and stalking
 - substitute address for official purposes for victims or eligible persons, program providing, Ch. 83
 - unemployment insurance benefits for, Ch. 187
- Sexual assault victims, forensic exams — appropriation for costs of providing, Ch. 504

CRIMINAL PROCEDURE

- City attorney, service upon attorney general of notice of appeal filed or received in criminal proceeding, Ch. 154
- Court reporters, transcript fees — payment revised, Ch. 254
- Crime victims' right to attend proceedings, revising definition of "victim" relating to, Ch. 33
- Electronic audio-video communication, two-way — clarifying requirements and expanding authorized use to arraignments, acceptance of pleas, sentencing hearings, and requiring court to inform defendant of right to object to use, Ch. 222
- Sentencing and sentences, See SENTENCING AND SENTENCES
- Supervisory fees, collection responsibility transferred, Ch. 473

- D -

DAMAGES

- Malpractice, medical — reduced chance of recovery caused by, regulation of damages that may be granted, Ch. 229
- Structured Settlement Protection Act, Ch. 351
- Student construction projects, limiting school district and public postsecondary institution liability resulting from, Ch. 521
- Timber, taking without lawful authority — clarifying damages to be awarded, Ch. 239

DAMS AND RESERVOIRS

- Fort Peck Reservoir, Montana's congressional delegation urged to introduce and support legislation requiring u.s. army corps of engineers to increase and maintain minimum pool elevation, HJR 4
- Hungry Horse Dam, urging department of natural resources and conservation to enter negotiations to determine availability and cost of water stored behind dam for possible contract to support future water development and existing water use in clark fork river basin, HJR 3

“DANE’S LAW”, Ch. 270

DAY CARE FACILITIES AND SERVICES

Medicine, prohibiting administration to child without proper authorization from child’s parent or guardian, Ch. 270

DEAF AND BLIND, MONTANA SCHOOL FOR THE

Appropriations, Ch. 490, Ch. 560, Ch. 607

Braille electronic equipment loan program, establishment, Ch. 490

Eligibility of children for admittance, revision of process for determining, Ch. 41

Nonresident children, revenue received for admission — exemption from requirement to spend nongeneral fund money before general fund money, Ch. 151

DEBTOR-CREDITOR RELATIONSHIPS

Adjustment of debts, repeal of certain laws, Ch. 272

DEFERRED COMPENSATION

Revision of catchup provisions, Ch. 329

DEFERRED DEPOSIT LENDERS

Consumer to have right of rescission and allowing arbitration clauses in loan agreements, Ch. 210

License and records provisions revised, Ch. 119

DENTISTRY AND DENTISTS

Montana State University-Bozeman, dental school feasibility study, Ch. 339

DENTISTRY, BOARD OF

Appointments to, SR 4, SR 19

Screening panels for disciplinary matters, establishment and authorizing oversight of rehabilitation programs, Ch. 60

DESIGN-BUILD CONTRACTING BOARD

Reduction in and clarification of membership, Ch. 113

DETENTION CENTERS

County jail work programs, allowing public projects for purposes of, Ch. 414

Sheriffs’ Retirement System, county detention officer membership provided, Ch. 259

DEVELOPMENTAL DISABILITIES, PERSONS WITH

Abuse, neglect, or exploitation — penalties revised, Ch. 429

Commitment, definition of “seriously developmentally disabled” amended and criterion of near total care removed, Ch. 27

Intermediate care facility utilization fee, definition revised to include facilities for mentally retarded and fee increased, Ch. 377

Medicaid funds not expended for provision of basic health and safety services, pilot program for use, Ch. 304

Services account, tax credit for contributions to — extending termination date, Ch. 338

DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL

Renaming as Montana Council on Developmental Disabilities, Ch. 78

DIABETES

Limited coverage health insurance plans to exclude coverage for certain benefits, Ch. 174

DISABILITIES, PERSONS WITH**Elections**

paper ballots, use in any election so votes may be manually counted and providing exception to facilitate voting by disabled voters, Ch. 275

voting, laws revised to facilitate, Ch. 367

License plates for permanently disabled persons, provisions revised, Ch. 507

Montana youth leadership forum for students with disabilities including Indian students on reservations, provision for and funding, Ch. 501

Parking placards, temporary — authorizing certain health care providers to issue, Ch. 596

School tuition and transportation costs, payment for child with disability, Ch. 463

Students with disabilities who are under 6 years of age, special education funding ensured and revisions made for compliance with reauthorization of individuals with disabilities education act, Ch. 255

Wheelchairs, persons using to be considered pedestrians and clarification of provisions, Ch. 233

DISASTERS, See EMERGENCIES OR DISASTERS**DISCRIMINATION**

Military service, prohibiting employment discrimination, Ch. 381

DISEASES

Marijuana, medical use, Initiative No.148(Appendix)

DISSOLUTION OF MARRIAGE

Petition, surcharge for filing increased, Ch. 408

DISTRICT COURTS

Child support enforcement order, elimination of requirement for registration with department of health and human services prior to administrative modification process, Ch. 564

Drug offender accountability and treatment program, implementation, Ch. 282

18th Judicial District, providing for additional judge, Ch. 373

Marriage license fee increases, disposition for court operations, Ch. 114

DISTRICTING AND APPORTIONMENT

Holdover senators, assignment to districts for remainder of senators' terms in implementing redistricting plan — eliminating statutory authority for, Ch. 357

DOCUMENTS OF TITLE

Revision of Chapter 7 of Uniform Commercial Code to reflect development of electronic documents, Ch. 575

DOMESTIC VIOLENCE

Domestic violence intervention program grants, administration by board of crime control, Ch. 493

Indigent victims, civil legal assistance — funding provided, Ch. 408

DOMESTIC VIOLENCE (Continued)

Partner or family member assault, no contact orders — provisions for,
Ch. 411

Partner or family member assault, sexual assault, or stalking victims —
program providing substitute address for official purposes for victims
or eligible persons, Ch. 83

DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION

Termination date extended, Ch. 23

DOMESTIC VIOLENCE INTERVENTION PROGRAM

Establishment and funding, Ch. 493

DRAINAGE DISTRICTS

Taxes and assessments, levy authority — clarification, Ch. 451

DRIVING UNDER THE INFLUENCE, See MOTOR VEHICLES AND
TRAFFIC REGULATIONS

DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, Ch. 282

DRUGS AND CONTROLLED SUBSTANCES AND DEVICES

Anhydrous ammonia, theft for purpose of manufacturing dangerous drugs
— criminal provisions provided and exceptions, Ch. 137

Driving under the influence, See MOTOR VEHICLES AND TRAFFIC
REGULATIONS

Drug Offender Accountability and Treatment Act, Ch. 282

Ephedrine and pseudoephedrine, regulation, Ch. 572

Marijuana, medical use, Initiative No.148(Appendix)

Methamphetamine

enforcement laws revised, Ch. 137

lab remediation activities, establishing standards and requirements to
conduct and providing rulemaking authority for standards for
precursors to methamphetamine, Ch. 461

possession, second or subsequent offense — penalty changed, Ch. 277

residential treatment programs, establishment and maintenance,
Ch. 277

watch program, voluntary retailer — provision for, Ch. 572

Prescription drugs

medicaid

indian reservations, purchase at tribal or indian health service
health care facilities — options or waivers for, Ch. 128

prescription drug expansion program, amended as state pharmacy
discount program, Ch. 287

medical care discount card and pharmacy discount card act, Ch. 456

physician assistants, prescription and dispensing authority revised,
Ch. 519

state pharmacy access program to complement medicare part D

program, consumer information and technical assistance program
and education outreach for consumers and professionals, and state
pharmacy discount program, Ch. 287

Prescriptions, unreadable — civil penalty, Ch. 436

Public assistance benefits, felony drug offenders exempt from federal
prohibition on eligibility under certain conditions, Ch. 230

DRUGS AND CONTROLLED SUBSTANCES AND DEVICES (Continued)

- Substance abuse and especially methamphetamine use, urging continued efforts toward intraagency and interagency prevention coordination and support of interagency efforts to assist Montanans in need, HJR 1
- Workforce drug and alcohol testing program, revision, Ch. 177

- E -

ECONOMIC DEVELOPMENT

- Big sky economic development fund and program, Ch. 588
- Indian tribes, requesting interim study to investigate special challenges and opportunities facing, HJR 41
- Montana Equity Capital Investment Act, Ch. 537
- Montana Renewable Power Production and Rural Economic Development Act, Ch. 457
- State-Tribal Economic Development Commission — duration extended, reducing required quorum, and appropriation for, Ch. 460
- Tax abatement for economic development organizations, allowing recapture of incentives that do not meet requirements of, Ch. 597
- Technology districts, creation, Ch. 566

ECONOMIC DEVELOPMENT, OFFICE OF

- Primary sector business workforce training program
 - administration transferred from, Ch. 169
 - training grants, appropriation for, Ch. 170

EDUCATION, See specific SCHOOL heading; UNIVERSITY SYSTEM

EFFECTIVE DATES, SPECIAL, See TABLES OF EFFECTIVE DATES, printed separately in this volume

ELECTION ADMINISTRATORS, See generally ELECTIONS

ELECTIONS, See also BALLOT ISSUES; SCHOOL ELECTIONS

Absentee ballots

- elector who dies before election day, cast and returned by — ballot must be counted, Ch. 359
- reactivation of elector if elector votes by absentee ballot in any election, Ch. 446
- revision of provisions, Ch. 286
- subsequent elections, for — elector may request and providing form, Ch. 284

Absentee voting provisions revised, Ch. 286

Ballots

- paper ballots, use in any election so votes may be manually counted and providing exception to facilitate voting by disabled voters, Ch. 275
- time for printing revised and handling rejected ballots clarified, Ch. 286

County clerks and recorders who are also election administrators, additional compensation, Ch. 182

Disabled electors, laws revised to facilitate voting by, Ch. 275, Ch. 367

Judges of elections

- disabled electors, facilitation of voting by, Ch. 367
- unemployment insurance laws, describing services excluded from definition of “employment” in, Ch. 466

ELECTIONS (Continued)

- Political practices, commissioner of — restrictions on candidacy for office, Ch. 479, See also **POLITICAL PRACTICES, COMMISSIONER OF**
- Polling places, requiring conformance with accessibility standards under americans with disabilities act, Ch. 367
- Public service announcements featuring candidate for office, prohibiting use of state funds for, Ch. 145
- Reactivation of elector if elector appears in order to vote or votes by absentee ballot in any election, Ch. 446
- Revision of provisions generally, Ch. 286, Ch. 586
- Voter registration and identification requirements, revision of provisions, Ch. 286
- Voting system standards, revision, Ch. 286

ELECTRICAL BOARD, STATE

- Appointments to, SR 5, SR 19

ELECTRONIC FUNDS TRANSFER

- Financial institutions subject to and in compliance with Regulation E of the federal Electronic Fund Transfer Act considered to be in compliance with state provisions, Ch. 77
- Local governments making payments to state or state making payments to local government, requirements, Ch. 432
- Public assistance grants, allowing payments by, Ch. 94

ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS

- Licensing and regulation, Ch. 303

EMERGENCIES OR DISASTERS

- Administrative rule, emergency — may not be used to implement administrative budget reduction, Ch. 265
- Montana National Guard, requesting interim study regarding missions and operation for purposes of state active duty performed to meet state emergencies, SJR 14
- Physician assistant and supervising physician, practice during, Ch. 519
- Statewide mutual aid system, Ch. 354
- 2-1-1 telephone number, statewide — provisions for, Ch. 548

EMERGENCY MEDICAL SERVICES

- Assault with bodily fluid, changing mental state element of and expanding offense to include health care providers, Ch. 292
- Health care facilities that record health care emergency telephone communications made to, crime of violating privacy in communications not committed, Ch. 435
- Newborns, surrender to emergency services providers — clarifying availability of information concerning counseling, Ch. 102

ENERGY

- Alternative energy systems loan laws, revision, Ch. 110
- Alternative renewable energy projects, clarification of eligibility for renewable resource grants and loans, Ch. 117
- Distributed energy generation, requesting interim study to investigate potential benefits of and obstacles to expanding, SJR 36
- Local government energy performance contracts, provisions for, Ch. 162
- Low-income energy assistance program, appropriation for, Ch. 439

ENERGY (Continued)

- Montana Renewable Power Production and Rural Economic Development Act, graduated renewable energy standard provided, Ch. 457
- Ongoing energy planning and coordinating entity, requesting interim study to evaluate possible creation of, SJR 39
- Renewable energy production incentive and production tax credit programs, congress urged to support, SJR 17
- State building energy conservation program
 - capital projects, review for potential inclusion, Ch. 499, Ch. 560
 - conservation projects for fiscal years 2006 and 2007, Ch. 310
 - general obligation bonds to fund, issuance authorized, Ch. 310
- State energy policy components, continual process to develop — requiring legislative energy and telecommunications interim committee to maintain, Ch. 221

ENVIRONMENTAL PROTECTION

- Animal feeding operations, concentrated — environmental review, Ch. 403
- Environmental impact statements, requiring applicants to pay costs and fees for preparation, Ch. 337
- Environmental violations investigation and prosecution, authority created in department of justice, Ch. 506
- Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7

ENVIRONMENTAL QUALITY COUNCIL

- Split estates of mineral and surface owners related to oil and gas development and coal bed methane reclamation and bonding, interim study required Ch. 527
- State energy policy components, continual process to develop — eliminating requirement that council maintain, Ch. 221
- Water adjudication fees, reporting requirements, Ch. 288

ENVIRONMENTAL QUALITY, DEPARTMENT OF

- Alternative energy systems loan laws, additional rulemaking authority provided, Ch. 110
- Appropriations, Ch. 310, Ch. 355, Ch. 459, Ch. 607
- Director, appointment, SR 13
- Energy performance contracts for local governments, qualification of contractors and assistance to governments, Ch. 162
- Enforcement procedures, revision of provisions generally, Ch. 486, Ch. 487
- Gasoline blended with ethanol, required use — enforcement of provisions, Ch. 452
- Gasoline containing methyl tertiary butyl ether — enforcement of provisions prohibiting importation, sale, and dispensing, Ch. 385
- Methamphetamine lab remediation activities, establishing standards and requirements for certifying persons to conduct, Ch. 461
- Mines and mining, responsibilities, See generally MINES AND MINING
- Oil or gas well facilities, rulemaking authority transferred from, Ch. 236

ENVIRONMENTAL QUALITY, DEPARTMENT OF (Continued)

- State building energy conservation program
 - capital projects, review for potential inclusion, Ch. 499, Ch. 560
 - general obligation bonds to fund, issuance authorized and appropriation of proceeds, Ch. 310
- Subdivisions, water and sanitation information — requirements for, Ch. 302
- Underground storage tank permit issuance or renewal, eliminating requirement for prior determination of compliance or issuance of compliance order, Ch. 20

ENVIRONMENTAL REVIEW, BOARD OF

- Air quality permits, duties, See generally AIR QUALITY
- Appointments to, SR 16
- Gasoline blended with ethanol, required use — rules establishing allowable trace levels of MTBE and establishing reporting and sampling requirements, Ch. 452
- Gasoline containing methyl tertiary butyl ether — adoption of rules establishing allowable trace levels and establishing reporting, and sampling requirements, Ch. 385
- Oil or gas well facilities, rulemaking authority transferred to, Ch. 236
- Subdivisions, water and sanitation information — requirements for, Ch. 302

ESTATES AND PROBATE

- Foreign personal representative, filings provision clarified, Ch. 513
- Nondomiciliary decedent's will filed and not probated in domiciliary state, provision for, Ch. 410
- Small estates, personal property — collection by affidavit, value of property changed, Ch. 513
- Uniform TOD security registration, revising definition of "security account", Ch. 76

EXAMINERS, BOARD OF

- Meeting times revised, Ch. 105

EXECUTION

- Mobile homes, abandoned — clarification of landlord's storage, sheriff's sale, and lien provisions, Ch. 90

EXECUTIVE BRANCH

- Appropriation, Ch. 6

- F -

FACILITY FINANCE AUTHORITY

- Appointments to, SR 16

FACILITY SITING

- Definition of "facility" revised and defining term "upgrade", Ch. 142

FINGERPRINTS

- Beer and wine licenses for off-premises consumption, facility manager's fingerprint and background check requirements removed and clarifying requirement for additional fingerprint and background checks for license, Ch. 495

FINGERPRINTS (Continued)

- Commercial driver's license hazardous materials endorsement, fingerprint-based background check for, Ch. 428
- Elections, disabled electors may use fingerprint or identifying mark instead of signature, Ch. 367

FIRE DEPARTMENT RELIEF ASSOCIATIONS

- Disability and pension funds, funding revised, Ch. 193

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

- Administrative provisions revised, Ch. 329
- Benefits and definitions, revision generally, Ch. 305
- Dependent child, benefits payable to — payment to a trust in certain circumstances, Ch. 369

FIRES AND FIRE PROTECTION

- Fire seasons, provisions revised and allowing small recreational fires, Ch. 492
- Wildland fires — requesting interim study to develop, consolidate, and update fire-related statutes in order to improve suppression and mitigation, to address dangerous conditions arising from drought and forest fuels, and complications and costs of fighting fires in wildland/urban interfaces, HJR 10

FISH AND WILDLIFE

- Bull trout and cutthroat trout, enhancement program for — emergency instream flow funding from, Ch. 84
- Endangered species, state list — department to remove any species or subspecies without legislative approval if same is removed from federal list, Ch. 46
- Exotic wildlife, prohibitions on possession — providing exceptions and exemptions, Ch. 281
- Federal predator control, clarifying state's rights and remedies to request and to exercise rights and remedies to prevent and control damage or conflict on public or private land caused by predatory animals and urging congressional delegation to obtain funding and assistance for citizens and communities adversely affected by federal wolf reintroduction, HJR 29
- Fishery resources, instream flows to benefit — provisions revised, Ch. 70, Ch. 85
- Fishing access enhancement program
 - funding sources, fiscal analyses to be provided to review committee, Ch. 471
 - provisions made permanent and providing for reports regarding success and recommendations by review committee, Ch. 48
- Fort Peck multispecies fish hatchery, production of fish at and planting of fish from — provisions for, Ch. 245
- Future fisheries improvement program, emergency instream flow funding from, Ch. 84
- Game animals
 - cities and towns — expanding power to control, remove, and restrict, Ch. 261
 - taken by hunters, allowing nonmonetary, low-value prize contests based on size, Ch. 424

FISH AND WILDLIFE (Continued)

- Game wardens' retirement system, administrative provisions revised, Ch. 329
- Grizzly bear, illegal taking — restitution increased, Ch. 227
- Habitat acquisition program, provisions made permanent and ensuring maintenance of funding sources, Ch. 50
- Harvest heritage, preservation, Constitutional Amendment No.41(Appendix)
- Hunter management and hunting access enhancement programs
 - big game license lottery proceeds, dedication, Ch. 471
 - block management program, landowner enrolled in to receive benefits provided under, Ch. 471
 - funding sources for hunting access enhancement program, fiscal analyses to be provided to review committee, Ch. 471
 - provisions made permanent, Ch. 235
- Landowners
 - block management program, enrolled in — to receive benefits provided under hunter management and hunting access enhancement programs, Ch. 471
 - elk permits for landowners who offer free public elk hunting, either-sex or antlerless — repeal of termination date for, Ch. 52
 - game animals — right to use aircraft to protect property by driving, herding, or hazing, Ch. 211
 - hunting license preferences for, requesting interim study to review programs and statutes of various states in creating, HJR 30
 - private property, landowner's — lawful method of hunting on, Ch. 164
- License agents — compensation increased, allowing charge of convenience fee for purchases made with credit or debit card, and revising definition of "transaction", Ch. 515
- Licenses, licensing, and permits
 - disabled combat veterans, providing half-priced deer and antelope licenses to certain veterans, Ch. 556
 - elk permits for landowners who offer free public elk hunting, either-sex or antlerless — repeal of termination date for, Ch. 52
 - fees for certain licenses and drawings, revision, Ch. 585
 - game damage licenses, supplemental — repeal of termination date, Ch. 51
 - hunter management program cooperator's complimentary license, designation of immediate family member to receive, Ch. 471
 - hunting license preferences for landowners, requesting interim study to review programs and statutes of various states in creating, HJR 30
 - lottery for certain big game licenses and proceeds dedicated to hunting access enhancement and law enforcement, Ch. 471
 - military personnel, free resident licenses for certain personnel, Ch. 573
 - mountain goat license, auction or lottery and use of proceeds, Ch. 40
 - nonresident child of resident allowed to purchase nonresident licenses at reduced cost, Ch. 484
 - resident senior combination license, creation, Ch. 585
 - wild buffalo licenses, allocation to individuals designated by Montana indian tribes, Ch. 378

FISH AND WILDLIFE (Continued)

Licenses, licensing, and permits (Continued)

- wild turkey tag, nonresident — nonresidents holding certain hunting licenses allowed to purchase at discounted fee, Ch. 150

youth

- class B-13 nonresident youth big game combination license, creation and provision for holder to also apply for nonresident antlerless elk B tag, Ch. 470
- class B-15 nonresident child's elk license, creation, Ch. 484
- terminally ill youth under 17 years of age to receive a free one-time Montana hunting license, Ch. 80

- Private fish ponds, license provisions revised, Ch. 157

- Private Lands/Public Wildlife Review Committee, provisions made permanent, Ch. 235

- River restoration program, emergency instream flow funding from, Ch. 84

- Teton-Spring Creek Bird Preserve and its special archery season, eliminating authorization for, Ch. 419

- Tribal courts, confederated salish and kootenai — judgments for fish and game violations entitled to full faith and credit in Montana courts, Ch. 146

- Unlawful possession, shipping, transportation, sale, purchase, or exchange — language and penalties clarified, Ch. 59

- Warm water fishery enhancement account, establishment, Ch. 343

- Wolf packs, use of radio-tracking collars for monitoring, Ch. 578

- Yellowstone area bison and elk herds, elimination of brucellosis — urging u.s. secretaries of agriculture and interior to direct appropriate federal agencies to expedite and urging u.s. department of agriculture as lead agency in elimination plan, HJR 22

FISH, WILDLIFE, AND PARKS COMMISSION, See also generally FISH AND WILDLIFE

- Appointments to, SR 15, SR 16

- Rights-of-way for certain purposes, acquisition by department without approval of commission and consent by commission for limited property boundary and water rights adjustments by department with adjacent landowners, Ch. 430

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF, See also generally FISH AND WILDLIFE; PARKS AND RECREATION

- Appropriations, Ch. 459, Ch. 560, Ch. 607

Boats

- state recreational boating safety program, making permanent departmental authority to contract with counties for administration, Ch. 322

- validation decals, payment of programming costs, Ch. 237

- Capitol complex grounds, maintenance — responsibility transferred from, Ch. 321

- Director, appointment, SR 13

- Emergency instream flows, funding provisions, Ch. 84

- Hunting and fishing access enhancement programs' funding sources, fiscal analyses to be provided to review committee, Ch. 471

- Jocko fish hatchery, sale — waiver of certain requirements, Ch. 560

- Montana Agricultural Center and Museum of the Northern Great Plains, transfer of ownership, Ch. 98

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF (Continued)

Rights-of-way for certain purposes, acquisition without approval of commission and limited property boundary and water rights adjustments with adjacent landowners allowed, Ch. 430

Vehicle taxes and fees, fund transfers related to — technical corrections, Ch. 325

FLAG OF MONTANA

Public official's casket, allowing Montana flag to be draped over, Ch. 219

FLATHEAD BASIN COMMISSION

Membership revised and making permanent the transfer to Department of Natural Resources and Conservation, Ch. 387

FOREIGN CAPITAL DEPOSITORIES

Elimination of authority for and provisions governing, Ch. 163

FORESTS AND FORESTRY

Public lands, roads and access to — congress urged to adopt legislation requiring u.s. forest service and bureau of land management to not arbitrarily close, HJR 18

Timber, taking without lawful authority — clarifying damages to be awarded, Ch. 239

Wildland fires — requesting interim study to develop, consolidate, and update fire-related statutes in order to improve suppression and mitigation, to address dangerous conditions arising from drought and forest fuels, and complications and costs of fighting fires in wildland/urban interfaces, HJR 10

FRAUDULENT TRANSFERS

Cause of action, period of time for filing extended, Ch. 440

FUNERAL SERVICE, BOARD OF

Appointments to, SR 5

- G -

GAMBLING

Antique slot machines, providing for public display, Ch. 134

Bingo, providing for multiple winning patterns, Ch. 134

Internet gambling, defining as illegal gambling enterprise and exception, Ch. 201

Licenses or permits, expiration — providing remedies to pursue violations by licensee following, Ch. 134

Poker machines, increasing types of poker games that may be played on, Ch. 134

Seized evidence, providing procedure for forfeiture, Ch. 134

Video gambling machines

automated accounting and reporting system, requirements changed, Ch. 319

bonus game to be played on, providing definition, Ch. 134

images and screens, providing rulemaking authority for display, Ch. 134

manufacturer, examination costs paid by — use changed, Ch. 327

permit surcharge fee, elimination, Ch. 528

private testing facilities to be licensed as manufacturers, Ch. 134

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM

Administrative provisions revised, Ch. 329

GASOLINE, See also OIL AND GAS; TAXATION, GASOLINE AND VEHICLE FUELS

Ethanol, requiring use of certain types of gasoline blended with — standards and specifications and providing that gasoline may not contain more than trace levels of MTBE, Ch. 452

Gasoline containing methyl tertiary butyl ether — prohibiting importation, sale, and dispensing, Ch. 385

GENERAL APPROPRIATIONS ACT OF 2005, Ch. 607

GIFT CERTIFICATES

Expiration dates prohibited, associating ownership with possessor, limiting fees, and allowing limited cash redemption, Ch. 291

GOVERNOR

Appointments by, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 13, SR 14, SR 15, SR 16, SR 17, SR 18, SR 19

Appropriations, Ch. 295, Ch. 459, Ch. 560, Ch. 607

Commerce, Department of — report regarding local government infrastructure preliminary engineering grants awarded, Ch. 580

Economic development, See ECONOMIC DEVELOPMENT; ECONOMIC DEVELOPMENT, OFFICE OF

Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7

Military rules and regulations, clarification of authority to prescribe, Ch. 61

Political practices, commissioner of — removal from office, requiring reasons to be in writing, Ch. 479

Postsecondary scholarship program and advisory council, Ch. 489

Privatization plans for state services, approval or disapproval required, Ch. 285

Substance abuse and especially methamphetamine use, urging continued efforts toward intraagency and interagency prevention coordination and support of interagency efforts to assist Montanans in need, HJR 1

GRAVEL

Local zoning regulations, clarifying applicability to sand and gravel operations, Ch. 340

GUARDIANS AND GUARDIANSHIP

Asthma medication, allowing self-administration by school pupils — notice to guardian that school district not liable for injury, Ch. 306

Child abuse and neglect, clarification of who may be appointed as guardian ad litem, Ch. 382

Day-care facilities, prohibiting administration of medicine to child without proper authorization from child's parent or guardian, Ch. 270

"GUS BARBER ANTISECRECY ACT", Ch. 390

- H -

HAIL INSURANCE, BOARD OF

Appointments to, SR 6, SR 17

HARD-ROCK MINING IMPACT BOARD

Appointments to, SR 6, SR 18

HAZARDOUS SUBSTANCES

Commercial driver's license hazardous materials endorsement, revision of laws to comply with federal provisions, Ch. 428

HAZARDOUS WASTE MANAGEMENT

Hazardous waste/CERCLA special revenue account, transfer from orphan share state special revenue account, Ch. 355

Remedial action upon release of hazardous substance

environmental quality protection fund account, transfer from orphan share state special revenue account, Ch. 355

orphan share fund, authorizing use for evaluating extent of contamination and formulating remediation alternatives for releases at certain facilities under CERCLA, Ch. 425

orphan share state special revenue account, transfers from, Ch. 278, Ch. 355

HEALTH AND MEDICAID INITIATIVES ACCOUNT

Administration and implementation, Initiative No.149(Appendix)

Medicaid services to specific children under age 19, appropriation for, Ch. 502

Small business health insurance pool — funding for premium incentive payments, premium assistance payments, and tax credits, Ch. 595

HEALTH CARE DECLARATION REGISTRY, Ch. 447

HEALTH CARE FACILITIES

Access, obstruction — criminal provision provided, Ch. 331

Critical access hospitals, adoption of rule for number of beds allowed and deleting limitation on number of acute care inpatient beds, Ch. 7

Inpatient bed day utilization fee, revision and extension and including critical access facilities in definition of "hospital", Ch. 606

Nursing, Board of — membership to include nurse from rural health care facility, Ch. 126

Privacy in communications, crime not committed when facilities record health care emergency telephone communications made to, Ch. 435

Specialty hospitals, licensing required and moratorium enacted, Ch. 365

HEALTH INSURANCE, See INSURANCE, DISABILITY

HEALTH, LOCAL BOARDS OF

Tattooing and body-piercing establishments, licensure and regulation provisions, Ch. 386

HEALTH MAINTENANCE ORGANIZATIONS

Form filing and approval process to be subject to same requirements as for insurers generally, Ch. 409

HEARING AID DISPENSERS, BOARD OF

Appointments to, SR 4

HIGHER EDUCATION, COMMISSIONER OF

Appropriation, Ch. 459

HIGHWAY PATROL OFFICERS

- Motor carrier safety and enforcement of certain laws, coordination with department of transportation, Ch. 366
- Retirement system disability provisions, coordination of departmental provisions regarding injury and reassignment of officers, Ch. 329
- Salary increase provisions and exemption from vacancy savings, Ch. 421

HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM

- Administrative provisions revised, Ch. 329
- Dependent child, benefits payable to — payment to a trust in certain circumstances, Ch. 369
- Disability provisions, coordination of departmental provisions regarding injury and reassignment of officers, Ch. 329
- Pension trust fund, statutory appropriation of amounts required to pay certain supplemental benefits, Ch. 464

HIGHWAYS

- Abandonment
 - highway, road, or right-of-way that provides existing legal access to public land or public waters including access for public recreational use — clarification for, Ch. 168
 - portion of right-of-way or of highway property when contiguous property has been subdivided prior to abandonment, provisions for, Ch. 226
- Billings, designation of main street as richard dean roebbling memorial highway, Ch. 388
- Design-Build Contracting Board, reduction in and clarification of membership, Ch. 113
- Federal highway program, urging congress to pass a well-funded, multiyear program in timely manner, SJR 22
- Motorized nonstandard vehicle, definition and provisions for operation, Ch. 468
- Old Forts Trail, revision and extension, Ch. 74
- Patrick G. Galvin Memorial Highway, establishment, Ch. 216
- Rawhide stampede rustlers and rendezvous trade corridor, establishment along state highway 16 between glendive and port of raymond, Ch. 362
- Scobey to Wolf Point, urging department of transportation to make specified improvements on road from, SR 3
- Terry, Montana, as official home of Evelyn Cameron Gallery — designation on maps and highway signs, Ch. 274
- Timber, taking by public officers or employees for purposes of highway — clarifying damages to be awarded, Ch. 239
- U.S. Highway 93 to within 10 miles of Canadian border, exempting vehicles from weight limits determined by federal bridge formula and voiding act if exemption would result in sanction of federal highway funds, Ch. 342
- Urban highway system, local government bonds issued for construction and construction engineering phases of projects, Ch. 336

HISTORICAL SOCIETY

- Appropriations, Ch. 459, Ch. 499, Ch. 560, Ch. 579, Ch. 607
- Board of trustees, appointments to, SR 7

HISTORICAL SOCIETY (Continued)

Lewis and Clark bicentennial specialty license plates, revenue allocation provisions, Ch. 223

Money received through donation, gift, bequest, or legacy to be used for general operation unless otherwise provided by donor, Ch. 148

Nonprofit corporations managing state-owned historic sites or buildings, allowing biennial review rather than quarterly audit of funds, Ch. 10

HOISTING ENGINES

Licensing and inspection requirements revised, Ch. 93

HORSERACING, BOARD OF

Appointments to, SR 5

Funds collected by or on behalf of, deposit requirements and statutory appropriation, Ch. 314

HOUSE BILL TO CHAPTER NUMBER TABLE, See TABLE OF HOUSE BILL TO CHAPTER NUMBER, printed separately in this volume**HOUSING, BOARD OF**

Appointments to, SR 16

HUMAN RIGHTS, COMMISSION FOR

Appointments to, SR 16

HUSBAND AND WIFE

Spousal privilege applies only to communications between spouses during the marriage, clarification, Ch. 158

- I -**IDENTITY THEFT**

Interim study of issues related to, request for, SJR 38

Prevention, provisions for, Ch. 518

IDENTITY THEFT PASSPORT PROGRAM

Creation, Ch. 55

INDEMNITY

Insurer's securities — indemnification agreements with banks, trust companies, or brokerage firms acting as custodian, Ch. 109

INDIANS

Agricultural research stations, state and federal, and tribal agricultural research programs — urging cooperative research efforts and sharing of educational information to facilitate ongoing research, sharing of scientists, and educational efforts in addressing critical issues, HJR 11

Child abuse and neglect, federal indian child welfare act — defining terms related to implementation and clarifying role of qualified expert witness in proceedings subject to, Ch. 349

Child support enforcement, revising laws to allow referrals to and from other IV-D programs including tribal programs, Ch. 21

Community colleges, tribally controlled — financial assistance for resident nonbeneficiary students, provisions revised, Ch. 147

Economic development, requesting interim study to investigate special challenges and opportunities facing tribes, HJR 41

INDIANS (Continued)

- Fish and game violations in Confederated Salish and Kootenai tribal courts, judgments entitled to full faith and credit in Montana courts, Ch. 146
- Medicaid program specifically involving tribes, tribal health care facilities, and indian health service health care facilities — implementation of recommendations to redesign, Ch. 128
- Montana youth leadership forum for students with disabilities including Indian students on reservations, provision for and funding, Ch. 501
- Secured transaction commercial codes, urging adoption by tribal governments and encouraging development of training programs for tribal courts on use, SJR 4
- State-Tribal Economic Development Commission — duration extended, reducing quorum for, and appropriation for, Ch. 460
- Statewide mutual aid system, participation allowed, Ch. 354
- Water adjudication fees not applicable to reserved claims to water, Ch. 288
- Wild buffalo licenses, allocation to individuals designated by tribes, Ch. 378

INDIGENT PERSONS

- Domestic violence victims, civil legal assistance — funding provided, Ch. 408
- Public defender system, establishment, Ch. 449

INFORMATION TECHNOLOGY

- Child support enforcement order requiring enrollment, agreement for service by electronic means, Ch. 431
- Court information technology, surcharge for — termination removed and deposit revised, Ch. 445
- Disabled parking placard applications, provisions for, Ch. 596
- Documents of title, revision of chapter 7 of uniform commercial code to reflect development of electronic documents, Ch. 575
- Gambling, internet — defining as illegal gambling enterprise and exception, Ch. 201
- Identity theft, provisions for prevention, Ch. 518
- Income tax withholding, electronic filing provisions revised, Ch. 67
- Legislative branch information technology projects, reserve account to fund, Ch. 581
- Montana products, electronic directory to be provided, Ch. 173
- POINTS replacement system of Department of Revenue, removing authority to establish fee to recover costs associated with and providing voidness provision contingent on repayment of loan through state general fund money, Ch. 550
- Statewide information technology project budget summary, expanding type of proposed major projects to be included and revising required content, Ch. 106
- Workers' compensation insurers to submit notices of coverage and cancellations electronically, Ch. 69
- Youth court records, revision of laws pertaining to confidentiality and information sharing, Ch. 423

INSTITUTIONS

Resident's liability for payment of care provided to residents under provision of criminal statute, restriction removed, Ch. 383

INSURANCE

Credit information, use in personal insurance, Ch. 363

Form filing and approval provisions revised, Ch. 409

Inquiries by insured regarding coverage, prohibiting adverse use, Ch. 498

Lender, restricting amount of insurance required of borrower to maintain on loan secured by real property, Ch. 97

Medical malpractice insurance, joint underwriting association — establishment, Ch. 475

Motor vehicle liability insurance, See MOTOR VEHICLES AND TRAFFIC REGULATIONS

Offenses, clarifying language relating to, Ch. 562

Premium due, notice of — revising time period for, Ch. 263

Revision of provisions generally, Ch. 469

Structured settlement payment rights, transfer — provisions for regulation, Ch. 351

INSURANCE, COMMISSIONER OF, See generally specific INSURANCE heading

INSURANCE, DISABILITY

Claim filing, claim reimbursements, and claim audits — establishing reciprocal time limits for and exceptions, Ch. 290

Genetics program, voluntary — name changed, fee increased, and account created for, Ch. 396

Limited coverage health insurance plans, issuance to additional uninsured Montana residents and providing certain coverage exclusions, Ch. 174

Long-term care insurance partnerships allowed by federal law or waiver under medicaid provisions, implementation allowed, Ch. 406

Medical Care Discount Card and Pharmacy Discount Card Act, Ch. 456

Montana public health care redesign project, implementation of certain recommendations of and authority for establishment of health insurance flexibility and accountability demonstration initiatives and other demonstration projects, Ch. 350

Revision of provisions generally, Ch. 469

Small business health insurance pool, creation, Ch. 595

Small employer health insurance, use of health and medicaid initiatives account, Initiative No.149(Appendix)

INSURANCE GUARANTY ASSOCIATION, CASUALTY AND PROPERTY

Claims, providing time limitation for filing certain claims with, Ch. 195

Removing minimum dollar amount for covered claim and clarifying immunity of association, Ch. 29

INSURANCE GUARANTY ASSOCIATION, LIFE AND HEALTH

Account, excluding certain unallocated annuity contracts from, Ch. 469

INSURANCE, LIFE

Annuity contracts, minimum nonforfeiture amounts — providing formula for determining rates of interest, amending contract charge, and allowing reduction for premium tax paid, Ch. 66

INSURANCE, LIFE (Continued)

- Police officer's monthly compensation, increasing amount deducted for premiums on group life insurance, Ch. 179
- Revision of provisions generally, Ch. 469
- Viatical settlement brokers — license requirements revised, clarifying rulemaking authority regarding provider's payments to insured that is not terminally or chronically ill, and clarifying that life insurance producer may act as broker, Ch. 552

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS

- Claims adjusters
 - continuing education act revised to include, Ch. 38
 - workers' compensation and occupational disease provisions, distinguishing from claims examiners under, Ch. 140
- Credit scoring information, indemnification of producers using, Ch. 363
- Revision of provisions generally, Ch. 469

INSURANCE, PROPERTY

- Homes, policies on — notice requirements for cancellation for nonpayment of premium, Ch. 263

INSURANCE, SURPLUS LINES

- Producer fee, changing reference to, Ch. 469
- Unauthorized insurer, revising conditions precedent to placing policy with, Ch. 191

INSURANCE, TITLE

- Trust indentures, reconveyance — providing for recovery of costs by insurers and producers when, Ch. 413

INSURERS, FARM MUTUAL

- Reinsurance options expanded, Ch. 469

INSURERS, RECIPROCAL

- Captive insurance companies formed as, clarification of provisions, Ch. 469

INSURERS REGULATION GENERALLY

- Captive insurance companies
 - application of voluntary dissolution provisions, limits on aggregate premium taxes and other taxes, and risk retention group statutes — clarification, Ch. 205
 - reciprocal insurer, formed as — clarification of provisions, Ch. 469
- Credit scoring models, filing, Ch. 363
- False information on certain filed statements, knowingly filing — penalty increased, Ch. 206
- Form use, notification — providing requirements for, Ch. 409
- Medical malpractice insurance report, information included with annual statement, Ch. 213
- Mental health commitment proceedings — private insurer responsible for precommitment detention, examination, and treatment costs, Ch. 480
- Revision of provisions generally, Ch. 469
- Securities — indemnification agreements for banks, trust companies, or brokerage firms acting as custodian, Ch. 109

INTERIM STUDIES

- Agricultural land — classification, valuation, and taxation of, HJR 43
- Child protective services system, SJR 37
- Community mental health crisis response systems, SJR 41
- Distributed energy generation, to investigate potential benefits of and obstacles to expanding, SJR 36
- Energy planning and coordinating entity, ongoing — to evaluate possible creation of, SJR 39
- Federal funds, state's reliance on and use of and implication of federal budget deficits on state programs, HJR 26
- Hunting license preferences for landowners, to review programs and statutes of various states in creating, HJR 30
- Identity theft, issues related to, SJR 38
- Indian tribes, investigation of special challenges and opportunities for economic development, HJR 41
- Low-income Montanans' access to Montana civil legal system and determination of whether changes are appropriate, SJR 6
- Montana National Guard, regarding missions and operation for purposes of state active duty performed to meet state emergencies, SJR 14
- Oil and natural gas property, property taxation of, HJR 44
- Professional and occupational licensing boards and programs dedicated to public service — methods to increase responsiveness, effectiveness, and efficiencies, SJR 35
- Prosecution services and county civil legal services by county attorneys in Montana, review of delivery and whether changes may be appropriate, SJR 40
- Public employee retirement funds — how funds are invested and how investment performance, retirement benefits, and legislative policy decisions interact to affect actuarial soundness, HJR 42
- Resource indemnity trust, laws and funding related to, HJR 36
- Sentencing practices and disproportionate representation of minorities in criminal justice and corrections systems, review, HJR 15
- Split estates of mineral and surface owners related to oil and gas development and coal bed methane reclamation and bonding, study by environmental quality council, Ch. 527
- Subdivision review process, SJR 11
- Superfund sites, identification of sites in Montana and impacts on communities directly impacted by, HJR 34
- Timber, contract harvesting from state lands — issues related to, HJR 33
- Wildland fires — to develop, consolidate, and update fire-related statutes in order to improve suppression and mitigation, to address dangerous conditions arising from drought and forest fuels, and complications and costs of fighting fires in wildland/urban interfaces, HJR 10
- Wireless enhanced 9-1-1 emergency telephone system, statewide — options for funding mechanisms and allocations for deployment, HJR 45

INTERNET, See generally INFORMATION TECHNOLOGY

INTOXICATION

- Public intoxication and treatment of alcoholism statutes, eliminating requirement that police take persons into protective custody, Ch. 442

INVESTMENTS, BOARD OF

Appointments to, SR 8, SR 16, SR 19

State agency loans from INTERCAP program, reauthorization, Ch. 8

IRRIGATION DISTRICTS

Commissioner qualifications revised, Ch. 402

Taxes and assessments, levy authority — clarification, Ch. 451

- J -

JUDGES' RETIREMENT SYSTEM

Administrative provisions revised, Ch. 329

Guaranteed annual benefit provisions, revising election provisions,
Ch. 329

Military service, purchase by members allowed, Ch. 329

JUDGMENTS AND DECREES

Revision of laws related to and collection of judgments, Ch. 392

Structured Settlement Protection Act, Ch. 351

JUDICIAL BRANCH

Appropriations, Ch. 6, Ch. 295, Ch. 459, Ch. 607

JURIES AND JURORS

Trial juries, selection — delaying effective and applicability dates of law
revising laws relating to, Ch. 99

JUSTICE, DEPARTMENT OF

Appropriations, Ch. 160, Ch. 295, Ch. 459, Ch. 504, Ch. 607

Cigarette and other tobacco product laws, enforcement and other laws
revised, Ch. 511Environmental violations investigation and prosecution, authority created
in department, Ch. 506

Gambling laws, responsibilities, See generally GAMBLING

Highway patrol officers, responsibilities, See generally HIGHWAY

PATROL OFFICERS

Loans from INTERCAP program, reauthorization, Ch. 8

Methamphetamines, voluntary retailer watch program — grants for,
Ch. 572

Motor carrier safety assistance program transferred from, Ch. 366

Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND

TRAFFIC REGULATIONS

Natural resource damage assessment and litigation, extension of
appropriation, Ch. 160New motor vehicle warrants, administrative and enforcement functions
transferred to, Ch. 280Partner or family member assault, sexual assault, or stalking victims —
program providing substitute address for official purposes for victims
or eligible persons, Ch. 83Sexual assault forensic exams, costs of providing — appropriation to office
of restorative justice, Ch. 504Telemarketing, administrative and enforcement functions transferred to,
Ch. 280

JUSTICE, DEPARTMENT OF (Continued)

- Tobacco product wholesaler's license, allowing request by attorney general for proceeding judicially to seek revocation for noncompliance with laws, Ch. 324
- Unfair trade practices and consumer protection laws, administrative and enforcement functions transferred to, Ch. 280

JUSTICES' COURTS

- Courts of record, establishment as — revising references to, Ch. 557

- L -

LABOR AND EMPLOYMENT

- Job Corps Program, prohibiting students from claiming the facility as student's residence for educational purposes, Ch. 132
- Military service employment rights, Ch. 381
- Personal services contracts, durational limit removed, Ch. 166
- Primary sector business workforce training program
 - provisions revised and administration transferred to department of commerce, Ch. 169
 - training grants, appropriation for, Ch. 170
- Wage collection fund, provision for, Ch. 14
- Workforce drug and alcohol testing program, revision, Ch. 177

LABOR AND INDUSTRY, DEPARTMENT OF

- Appropriations, Ch. 345, Ch. 459, Ch. 474, Ch. 607
- Building construction codes — clarifying that authority is applicable to plumbing, electrical, and elevator codes and making offense provisions consistent with building code, Ch. 68
- Catastrophically Injured Worker's Travel Assistance Act, administration, Ch. 345
- Country of Origin Placarding Act, rules for implementation, Ch. 279
- Crane inspectors, suspension of operation of cranes and hoists until defective conditions cured, Ch. 93
- Director, appointment, SR 13
- Elevator contractors, mechanics, and inspectors — licensing and regulation, Ch. 303
- Ethanol-blended gasoline, adoption of standards and specifications for use and enforcement, Ch. 452
- Military service employment rights, duties and powers specified, Ch. 381
- Private Alternative Adolescent Residential or Outdoor Programs, Board of — registration with, Ch. 294
- Professional and occupational licensing and regulation, revision and consolidation of laws, Ch. 126, Ch. 467
- Unemployment insurance functions transferred to
 - contribution, Ch. 466
 - tax administration, Ch. 67
- Weighing devices, revision of provisions generally, Ch. 34
- Workers' compensation, responsibilities, See generally WORKERS' COMPENSATION

LABOR APPEALS, BOARD OF

- Appointments to, SR 18

LAND INFORMATION ACT, Ch. 135

LANDLORD AND TENANT

Mobile homes, abandoned — clarification of storage, sale, and lien provisions, Ch. 90

LANDSCAPE ARCHITECTS, BOARD OF

Appointment to, SR 5

LAND USE

Municipal construction or development project decisions, commencement of action against municipality relating to — time period for, Ch. 412

LAND USE PLANNING

Local governments to review applications for development and use of property under regulations in effect at time site-specific development plan is submitted, Ch. 516

LAW ENFORCEMENT, See also PEACE OFFICERS

Minor in possession law, information or statements provided by person under age 21 regarding alleged sexual offense against that person or person helping victim obtain medical or other assistance or reporting offense may not be used in prosecution under, Ch. 183

Partner or family member assault, no contact orders — provisions for, Ch. 411

Private investigator license applications, notification requirement removed, Ch. 126

Racial profiling, revision of law prohibiting, Ch. 243

LAW, MONTANA CODE ANNOTATED

Recodification on title-by-title basis, direction for, Ch. 108

Revision and clarification generally, Ch. 130

LEGISLATIVE AUDIT COMMITTEE

Conservation easements and property tax policy issues associated with, requesting performance audit of extent, SJR 20

Privatization plans for state services — requiring findings, conclusions, and recommendations regarding, Ch. 285

LEGISLATIVE AUDIT DIVISION

Public defender services, audit so that funding responsibilities for certain counties can be calculated based on actual costs, Ch. 449

LEGISLATIVE BRANCH

Appropriations, Ch. 6, Ch. 607

Reserve account — establishment, use, and funding, Ch. 581

Short-term worker, definition revised, Ch. 11

LEGISLATIVE FINANCE COMMITTEE

Medicaid service costs and departmental budget, requiring reports be provided to, Ch. 380

LEGISLATIVE SERVICES DIVISION

Appropriations, Ch. 1, Ch. 527

LEGISLATURE

Appropriation, Ch. 1, See INDEX TO APPROPRIATIONS, printed separately in this volume

Developmental disabilities, persons with — report concerning pilot program for use of medicaid funds not expended for provision of basic health and safety services, Ch. 304

LEGISLATURE (Continued)

- Education and Local Government Interim Committee, school accreditation standard amendments — submission by board of public education for review and determination of fiscal impact for executive budget, Ch. 208
- Energy and Telecommunications Interim Committee
 - public service commission — to have certain review, program evaluation, and monitoring functions for, Ch. 221
 - state energy policy components, continual process to develop — to maintain, Ch. 221
- Federal funds, requesting interim study of state's reliance on and use of and implication of federal budget deficits on state programs, HJR 26
- Governor's appointments, senate concurrence, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 13, SR 14, SR 15, SR 16, SR 17, SR 18, SR 19
- Interim studies, See INTERIM STUDIES
- International trade agreements, affirming desire to be consulted on provisions of and requesting congressional delegation to promote protections for and best interests of state in negotiation of agreements, SJR 23
- Judicial Branch information technology, supreme court administrator to report on status, Ch. 445
- Loans from INTERCAP program for certain state agencies, reauthorization, Ch. 8
- Local government infrastructure preliminary engineering grants awarded, report by department of commerce regarding, Ch. 580
- Noxious weed management trust fund, provision for, Constitutional Amendment No.40(Appendix)
- Operating budgets and program transfers, significant changes — requiring reports to appropriate interim committees, Ch. 58
- Presession activity, legislators-elect entitled to compensation and expenses for authorized activity, Ch. 311
- Redistricting, eliminating statutory authority to assign holdover senators to districts for remainder of senators' terms in implementing plan, Ch. 357
- Revenue and Transportation Interim Committee
 - biodiesel fuel, tax credits and refunds claimed — reports relating to, Ch. 525
 - natural gas utility restructuring, tax revenue analysis requirement eliminated, Ch. 107
 - revenue, department of — eliminating certain requirements for reporting to, Ch. 318
- Revenue, Department of — reporting by, eliminating certain requirements, Ch. 318
- Rules to govern proceedings
 - house, HR 1
 - joint, SJR 1
 - senate, SR 1
- Schools
 - basic system of free quality public elementary and secondary, determination of costs and authorization of studies, Ch. 208
 - quality schools interim committee, establishment and duties, Ch. 371

LEGISLATURE (Continued)

- Secured transaction commercial codes, urging adoption by tribal governments and encouraging development of training programs for tribal courts on use — report by appropriate committee on implementation of codes and training, SJR 4
- State Prevention Programs, Interagency Coordinating Council for — requirement deleted for preparation and presentation of unified budget for state programs, Ch. 346
- 2-1-1 telephone number, statewide — reports relating to, Ch. 548
- Water adjudication fees, reports to, Ch. 288
- Workers' compensation state compensation insurance fund, legislative liaisons — provisions for, Ch. 283
- Zortman and Landusky mine sites, permanent trust fund for long-term or perpetual water treatment — establishment and requiring 2/3 vote to appropriate principal of trust, Ch. 278

LEWIS AND CLARK BICENTENNIAL COMMISSION

- Appropriation, Ch. 459
- Statutory references, elimination, Ch. 223

LEWIS AND CLARK BICENTENNIAL SPECIALTY LICENSE PLATES

- Sale continued, Ch. 223

LEWIS AND CLARK EXPEDITION IN MONTANA

- Commemoration of bicentennial, HJR 24

LIABILITY

- Dishonored payment, issuance — statute of limitations clarified, Ch. 392
- Malpractice, See MALPRACTICE, MEDICAL
- Occupational disease provisions merged under workers' compensation, insurers and compensation for, Ch. 416
- State agencies, false claims to — expanding civil and criminal liability for making, Ch. 312
- Student construction projects, limiting liability resulting from, Ch. 521
- Tobacco products, officers and directors of entities that sell in violation of laws — individual liability, Ch. 511

LIBRARIES

- Coal severance tax, allocation increased, Ch. 589
- Federations, revision of laws relating to, Ch. 73
- Public libraries and public library districts — revision of creation, consolidation, and funding provisions and creation of library depreciation reserve fund, Ch. 203

LIENS

- Agricultural liens, central filing system required and designating office in which to file effective financing statement, Ch. 207
- City water service charges, delinquent — to become liens upon property served or to be collected as debt of property owner, Ch. 451
- Mobile homes, abandoned — clarification of landlord's storage, sale, and lien provisions, Ch. 90
- Tax deficiency lien, establishment, Ch. 545

LIMITED LIABILITY COMPANIES

- Name, revising certain procedures for filing applications regarding and eliminating certain requirements regarding filing of certain copies with respect to, Ch. 71

LIVESTOCK

- Agricultural research stations, state and federal, and tribal agricultural research programs — urging cooperative research efforts and sharing of educational information to facilitate ongoing research, sharing of scientists, and educational efforts in addressing critical issues, HJR 11
- Animal feeding operations, concentrated — regulation, Ch. 403
- Beef industry, urging u. s. department of agriculture to refer to industry as united states beef industry and to refrain from referring to it as north american beef industry, HJR 5
- Canada, resumption of live cattle trade with — urging congress to reject until Montana producers and consumers can be assured that food supply is safe from BSE and cattle industry will not be harmed, HJR 7
- Country of Origin Placarding Act, Ch. 279
- Per capita fee and county predatory animal control funds, interest earned on money in account or funds to be deposited in account or funds, Ch. 12
- Taylor Grazing Act money, apportionment to counties simplified, Ch. 53
- Wolf packs, use of radio-tracking collars for monitoring, Ch. 578

LIVESTOCK, BOARD OF

- Appointments to, SR 17

LIVESTOCK, DEPARTMENT OF

- Appropriations, Ch. 459, Ch. 494, Ch. 607

LIVING WILLS

- Driver's licenses to provide for indication of execution of declaration, Ch. 296
- Health care declaration registry and related public education program, Ch. 447

LOBBYING AND LOBBYISTS

- Principals' reporting requirements, revision, Ch. 250

LOCAL GOVERNMENT, See also CITIES AND TOWNS; COUNTIES

- Bentonite production tax, value for debt limits and other bonding provisions, Ch. 559
- Big sky economic development fund and program, financial assistance from, Ch. 588
- Bonds
 - clarification and revision of laws, Ch. 451
 - urban highway system, issuance for construction and construction engineering phases of projects, Ch. 336
- Coal severance tax, allocation increased, Ch. 589
- Construction projects, alternative project delivery contract process — creation, Ch. 574
- Contracts, certain — providing legislative finding that it is within government's authority to enter, Ch. 198
- Electronic funds transfers required in making payments to state or state making payments to local government, Ch. 432
- Energy
 - alternative energy systems loan laws, revision, Ch. 110
 - performance contracts, provisions for, Ch. 162
- Historical writings or documents, display in or on public buildings — governmental authority recognized, Ch. 372

LOCAL GOVERNMENT (Continued)

- Impact fees, imposition and requirements, Ch. 299
- Infrastructure project grants, Ch. 580
- Land use, review of applications for development and use of property under regulations in effect at time site-specific development plan is submitted, Ch. 516
- Mill levies, revision of provisions, Ch. 453
- Montana Agricultural Center and Museum of the Northern Great Plains, transfer of ownership to, Ch. 98
- Official's bond, collection on prohibited if official overspends appropriation for a fund, Ch. 209
- Public defender system, costs — entitlement share payment changed to compensate for, Ch. 449
- Real estate brokers or salespersons, license fee or tax may not be imposed on, Ch. 400
- State land sales, consideration of certain local ordinances and resolutions, Ch. 335
- Subdivision proposals, review — provisions revised, Ch. 298
- Wind generation, commercial facilities — impact fee for units impacted by construction, Ch. 563

LONG-TERM CARE FACILITIES

- Surveys and informal dispute resolution, providing timeframes for results of, Ch. 514

LOWER INCOME, PERSONS OF

- Access to Montana civil legal system and determination of whether changes are appropriate, interim study requested, SJR 6
- Energy assistance program, appropriation for, Ch. 439

- M -

“MADE-IN-MONTANA” PRODUCTS

- Electronic directory to be provided, Ch. 173
- State's role in promotion, clarification, Ch. 248

MALPRACTICE, CHIROPRACTIC

- Chiropractic Legal Panel, provisions revised, Ch. 199

MALPRACTICE, MEDICAL

- Claims, liability may not be imposed on health care provider for act or omission by person or entity alleged to have been ostensible agent of provider at time act or omission occurred, Ch. 44
- Expert witnesses, qualifications provided, Ch. 49
- Expressions of apology or benevolence to be inadmissible as evidence of admission for any purpose in civil action, Ch. 42
- Insurance
 - insurer, report by — information required, Ch. 213
 - joint underwriting association, establishment, Ch. 475
- Legal panel decisions, inadmissibility — clarification, Ch. 253
- Nonliability of health care provider for act or omission by person or entity that was not employee or agent under control of provider at time act or omission occurred, Ch. 43
- Reduced chance of recovery caused by, regulation of damages that may be granted, Ch. 229

MANUFACTURED HOMES

Certificates of ownership, elimination for certain homes, Ch. 596
Improvement to real property, declaration as — procedures revised,
Ch. 450

MARIJUANA ACT, MEDICAL, Initiative No.148(Appendix)**MARRIAGE**

License fees, increase and use of revenue, Ch. 114, Ch. 493
Spousal privilege applies only to communications between spouses during
the marriage, clarification, Ch. 158
Validity or recognition, Constitutional Initiative No.96(Appendix)

MEAT AND MEAT PRODUCTS

Country of Origin Placarding Act, Ch. 279
Mobile slaughter facilities, licensing and inspection provisions, Ch. 494

MEDIATION

Workers' compensation mediation conferences, attendance provisions
revised, Ch. 39

MEDICAID, See PUBLIC ASSISTANCE**MEDICAL EXAMINERS, BOARD OF**

Appointments to, SR 4
Physician assistants, rulemaking provisions revised, Ch. 519
Screening panels for disciplinary matters, establishment and authorizing
oversight of rehabilitation programs, Ch. 60

MEDICAL MARIJUANA ACT, Initiative No.148(Appendix)**MEDICARE**

Prescription drugs, state pharmacy access program to complement
medicare part D program, Ch. 287

MEDICINE AND MEDICAL CARE

Anatomic pathology services, direct billing provisions, Ch. 266
Assault with bodily fluid, changing mental state element of and
expanding offense to include health care providers, Ch. 292
Day-care facilities, prohibiting administration of medicine to child
without proper authorization from child's parent or guardian, Ch. 270
Health care provider performing independent medical examination at
request of third party, duty of care, Ch. 246
Marijuana, medical use, Initiative No.148(Appendix)
Medical Care Discount Card and Pharmacy Discount Card Act, Ch. 456
Minor in possession law, information or statements provided by person
under age 21 regarding alleged sexual offense against that person or
person helping victim obtain medical assistance or reporting offense
may not be used in prosecution under, Ch. 183
Prescription drug consumer information and technical assistance program
and education outreach for professionals, Ch. 287
School pupils, asthma medication — allowing self-administration by,
Ch. 306

MENTALLY ILL OR INCAPACITATED PERSONS

Children's System of Care Planning Committee and a service area
authority board, clarification of duties for delivery of mental health
services to children, Ch. 200

MENTALLY ILL OR INCAPACITATED PERSONS (Continued)

- Commitment proceedings — private insurer or public assistance program responsible for precommitment detention, examination, and treatment costs, Ch. 480
- Community mental health crisis response systems, interim study requested, SJR 41
- Developmentally disabled, intermediate care facility utilization fee — definition revised to include facilities for mentally retarded and fee increased, Ch. 377
- Mental disorder, definition amended to specify that disorder may co-occur with addiction or chemical dependency, Ch. 81
- Mental health service area authority definitions and duties amended and public mental health system provisions revised, Ch. 553
- Montana State Hospital
 - chapel, privately funded — construction provisions, Ch. 560
 - resident's liability for payment of care provided to residents under provision of criminal statute, restriction removed, Ch. 383

MICROBUSINESS DEVELOPMENT

- Microbusiness finance program administrative account, requiring retention of interest earned by and transfer of interest earned on microbusiness development loan account, Ch. 204

MIDWIVES

- Nurse-midwives, revising references to supervision for, Ch. 126

MILITARY AFFAIRS

- Blind vendor vocational opportunities program extended to include military reservations, Ch. 249
- Commercial motor vehicle, vehicle used for military purposes not, Ch. 428
- Discharge certificates inadvertently filed with county clerk must be returned upon request, Ch. 165
- Drivers' licenses
 - selective service system registration requirements, fulfilling in conjunction with license applications, Ch. 180
 - spouses or dependents of persons stationed outside Montana on active duty, renewal by mail for second consecutive term, Ch. 104
- Employment rights, provisions for, Ch. 381
- Federal laws, adoption of most recent, Ch. 61
- Fishing and hunting, resident licenses — free for certain military personnel, Ch. 573
- Group life insurance premium reimbursement program for national guard and reserve members, Ch. 604
- Individual income tax returns, filing due date extended for persons serving in combat zones or contingency operations and clarifying deferment of taxes for person in military service, Ch. 30
- Judges' Retirement System, purchase of service by members allowed, Ch. 329
- Military and national guard installations, task force to conduct mission assessment — creation and funding, Ch. 599
- Montana National Guard, requesting interim study regarding missions and operation for purposes of state active duty performed to meet state emergencies, SJR 14

MILITARY AFFAIRS (Continued)

Motor vehicles

- insurance premium reductions for national guard members trained in defensive driving, Ch. 576

- registration requirements for national guard and reserve members stationed outside Montana, clarification, Ch. 228

- National guard, army and air — conveying highest honor and deepest respect for service and sacrifice of members who have been called to federal active duty in the war on terror, SJR 42

- National Guard Civil Relief Act, reducing number of days that member must be on active duty before being eligible for relief, Ch. 534

- Officers' commissions or warrants, vacating upon conviction of felony or incarceration in correctional facility, Ch. 28

- Property tax, revising delayed payment without penalty or interest for military on active duty or hospitalized for duty-related injuries or illness, Ch. 587

- Rules and regulations, clarification of governor's and adjutant general's authority to prescribe, Ch. 61

- Selective service system registration requirements — fulfilling in conjunction with driver's and commercial driver's licenses, instruction permit, and state identification card applications, Ch. 180

- University system tuition, waiver for qualified national guard members, Ch. 577

MILITARY AFFAIRS, DEPARTMENT OF

- Appropriations, Ch. 459, Ch. 560, Ch. 604, Ch. 607

- Director, appointment, SR 13

- Group life insurance premium reimbursement program for national guard and reserve members, Ch. 604

- Search and rescue surcharge money, use provision revised, Ch. 326

MILK CONTROL, BOARD OF

- Appointments to, SR 6, SR 17

MINERS' DAY, MONTANA

- June 26, 2005, designated as, SJR 29

MINES AND MINING, See also TAXATION, MINERALS

- Coal bed methane, SJR 7, Ch. 527

- Federal mineral leasing funds, distinction between dedication and distribution clarified, Ch. 568

Metal mine reclamation bonds

- enforcement procedures of department, revision generally, Ch. 486

- federal lands, amendment of provisions pertaining to mines on, Ch. 32

Opencut mining

- bond provisions pertaining to mines on federal lands, amendment, Ch. 32

- enforcement procedures of department, revision generally, Ch. 486

- Rock product mining provisions, Ch. 63

- Small miner intending to use impoundment to store waste from ore processing, approval requirements, Ch. 505

Strip and underground mine reclamation

- enforcement procedures of department, revision generally, Ch. 486

- revision of provisions generally, Ch. 127

MINES AND MINING (Continued)

Zortman and Landusky mine sites, permanent trust fund for long-term or perpetual water treatment — establishment, Ch. 278

MINORS, See also CHILD headings

Beer kegs, registration of sales and enforcement, Ch. 441

Criminal laws, “child” or “children” defined for purposes of, Ch. 364

Day-care facilities, prohibiting administration of medicine to child without proper authorization from child’s parent or guardian, Ch. 270

Driver’s licensing, graduated program with operation restrictions for persons under age 18, Ch. 297

Hunting and fishing licenses, See FISH AND WILDLIFE

Minor in possession law

information or statements provided by person under age 21 regarding alleged sexual offense against that person or person helping victim obtain medical assistance or reporting offense may not be used in prosecution under, Ch. 183

penalties revised, Ch. 546

Montana youth leadership forum for students with disabilities including Indian students on reservations, provision for and funding, Ch. 501

Newborns, surrender to emergency services providers — clarifying availability of information concerning counseling, Ch. 102

Private Alternative Adolescent Residential or Outdoor Programs, Board of — provisions for, Ch. 294

Retirement benefits payable to dependent child under certain retirement systems must be paid to a trust in certain circumstances, Ch. 369

Sexual abuse of children, offense revised, Ch. 364

Youth court, See YOUTH COURT

MOBILE HOMES, HOUSETRAILERS, AND TRAILER COURTS

Abandoned mobile homes — clarification of landlord’s storage, sale, and lien provisions, Ch. 90

Certificates of ownership, elimination, Ch. 596

MONEY LAUNDERING

Criminal offense created, Ch. 276

MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS

Transfer of ownership provision, Ch. 98

MONTANA ARTS COUNCIL

Appointments to, SR 7, SR 17

Appropriations, Ch. 579, Ch. 607

MONTANA CONSENSUS COUNCIL

Appropriation, Ch. 607

MONTANA CONSUMER DEBT MANAGEMENT SERVICES ACT, Ch. 272**MONTANA COUNCIL ON DEVELOPMENTAL DISABILITIES**

References to Developmental Disabilities Planning and Advisory Council changed to, Ch. 78

MONTANA EQUITY CAPITAL INVESTMENT ACT, Ch. 537**MONTANA ESSENTIAL FREIGHT RAIL ACT, Ch. 602****MONTANA FALSE CLAIMS ACT, Ch. 465**

MONTANA INTRASTATE MUTUAL AID COMMITTEE

Creation, Ch. 354

MONTANA LAND INFORMATION ACT, Ch. 135

MONTANA MEDICAL CARE DISCOUNT CARD AND PHARMACY
DISCOUNT CARD ACT, Ch. 456

MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT, Ch. 381

MONTANA MINERS' DAY

June 26, 2005, designated as, SJR 29

MONTANA PARENTS AS SCHOLARS PROGRAM, Ch. 184

MONTANA PUBLIC DEFENDER ACT, Ch. 449

MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT

Health insurance flexibility and accountability demonstration initiatives
and other demonstration projects, implementation of certain
recommendations of and authority for establishment, Ch. 350
Home and community-based services funded with medicaid money,
implementation of certain recommendations regarding programs,
Ch. 353

MONTANA RENEWABLE POWER PRODUCTION AND RURAL
ECONOMIC DEVELOPMENT ACT, Ch. 457MONTANA STATE HOSPITAL, See MENTALLY ILL OR INCAPACITATED
PERSONS

MONTANA STATE UNIVERSITY-BOZEMAN

Dental school feasibility study, Ch. 339

MONTANA USE OF CREDIT INFORMATION IN PERSONAL
INSURANCE ACT, Ch. 363

MORTGAGE BROKERS AND LOAN ORIGINATORS

Exemptions expanded, Ch. 301

Licenses, single application and renewal fees for entities solely owned by
individual applying for and clarifying that designated manager must
be licensed as mortgage broker, Ch. 368

Mortgage bankers, licensing exemption revoked and adding requirements
for licensing, Ch. 301

Revision of provisions, Ch. 136

MORTICIANS, FUNERAL DIRECTORS, AND CREMATORY FACILITIES

Burial-transit permits, deleting reference to, Ch. 126

MOSQUITO CONTROL DISTRICTS

Creation of district, provisions revised, Ch. 555

MOTION PICTURES

Big Sky on the Big Screen Act, Ch. 593

MOTOR CARRIERS

Safety assistance program, responsibility transferred, Ch. 366

MOTOR VEHICLES AND TRAFFIC REGULATIONS

Alcoholic beverages, open containers in vehicles prohibited, Ch. 348

Certificate of title

street rods, specially constructed vehicles, kit vehicles, and custom
vehicles — requirements, Ch. 458

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

Certificate of title (Continued)

- value of vehicle to be determined by applicant when applicant provides bond in amount of value, Ch. 171

Commercial motor vehicle operator driver's licenses

- federal regulations, revision of provisions to comply with, Ch. 428
- military selective service system registration requirements, fulfilling in conjunction with license applications, Ch. 180

- Dealers, additional demonstrator plates for placement on vehicles being moved to or from service and repair facilities before sale, Ch. 258

Definitions

- "motor vehicle", "motorcycle", and "motor-driven cycle" — revision, Ch. 468
- reorganization and recodification, Ch. 542

Drivers' licenses

- commercial driver's licenses, federal provisions — revision of laws to comply with, Ch. 428
- driving while license suspended or revoked, penalties increased when, Ch. 583

- eligibility requirements revised, Ch. 478

- examiner to administer examinations when, Ch. 358

- fees, deposit provisions revised, Ch. 464

- foreign nationals, issuance provisions, Ch. 478

- graduated program with operation restrictions for persons under age 18, Ch. 297

- living will declaration, to provide for indication of execution, Ch. 296

- military personnel, mail renewal — extending term of license renewed by and renewal for second consecutive term for spouses or dependents, Ch. 104

- military selective service system registration requirements, fulfilling in conjunction with license applications, Ch. 180

- revocation of certain licenses, issuance following — revisions, Ch. 547

Driving under the influence of alcohol or drugs

- charge imposed upon conviction of misdemeanor or felony, increase, Ch. 361

- driving while license suspended or revoked, penalties increased when, Ch. 583

- fifth or subsequent conviction, penalty increased, Ch. 54

- negligent homicide or negligent vehicular assault convictions as prior conviction for purposes of penalty imposed upon person convicted of driving under the influence and having three or more prior convictions for certain offenses, Ch. 54

- passengers under 16 years of age in vehicle at time of offense, increasing incarceration and fine imposed for first through third conviction, Ch. 477

- vehicular homicide while under the influence, offense of — creation, Ch. 426

Fleet vehicle registration

- 9-month period, for — allowing, Ch. 344

- responsibility transferred to department of justice, Ch. 22

Identification card applications, military selective service system

- registration requirements — fulfilling in conjunction with, Ch. 180

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

- Ignition interlock device provisions, revision, Ch. 547
- Junk vehicles, administrative penalties provided and venue provisions for enforcement actions amended, Ch. 443
- Liability insurance
 - driving without, penalty revised, Ch. 394
 - insurers
 - rental car required by person while person's car being repaired, insurer prohibited from designating specific rental car business, Ch. 251
 - repair businesses or locations, insurers having direct repair programs with — limitation on number of businesses or locations not allowed when, Ch. 407
 - national guard members trained in defensive driving, premium reductions for, Ch. 576
- License plates
 - dealers, additional demonstrator plates for placement on vehicles being moved to or from service and repair facilities before sale, Ch. 258
 - generic specialty plates, definition of sponsor revised, Ch. 223
 - lewis and clark bicentennial plates, continuing sale authorized and allocation of revenue, Ch. 223
 - permanently disabled persons, for — provisions revised, Ch. 507
 - street rods, specially constructed vehicles, kit vehicles, and custom vehicles — requirements, Ch. 458
 - trailer or semitrailer removed from fleet, surrender of plate, Ch. 315
 - veterans, two sets for use on two vehicles — exemption from cemetery and registration fees, Ch. 116
- Load, term permit allowed for load in excess of specified limits but not exceeding 35,000 pounds in excess axle weight, Ch. 24
- Motorized nonstandard vehicle and electric personal assistive mobility device, definitions and provisions for operation, Ch. 468
- New motor vehicle warranties, administrative and enforcement functions transferred to department of justice, Ch. 280
- Open containers of alcoholic beverages in vehicles prohibited, Ch. 348
- Quadricycles, allowing operation without motorcycle endorsement, Ch. 79
- Recreational vehicles and campers allowed to exceed width limits when, Ch. 241
- Registration
 - fees, deposit provisions revised, Ch. 464
 - highway patrol officers' salary increases, funding from increase in registration fees, Ch. 421
 - motor homes, revision and permanent registration when, Ch. 500
 - national guard and reserve members stationed outside Montana, clarification of requirements, Ch. 228
 - restricted registration receipt allowing operation of vehicle only for employment purposes, issuance when, Ch. 394
 - revision and clarification, Ch. 542, Ch. 596
 - state parks and fishing access sites, fee collected for — providing for direct deposit, Ch. 542
 - street rods, specially constructed vehicles, kit vehicles, and custom vehicles — requirements, Ch. 458

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

- Registration (Continued)
 - trailer and semitrailer fleets, permanent registration required, Ch. 315
 - veterans' license plates, two sets for use on two vehicles — exemption from cemetery and registration fees, Ch. 116
- Rental car businesses, insurance company may not designate specific business when person is entitled to rental car while person's car being repaired, Ch. 251
- Rental vehicle entities, reporting and compliance requirements added, Ch. 469
- Repair businesses or locations, insurers having direct repair programs with — limitation on number of businesses or locations not allowed when, Ch. 407
- Revision of provisions generally, Ch. 542, Ch. 596
- Roundabouts instead of right-angle intersections, construction encouraged, HJR 12
- School bus safety, revision of provisions, Ch. 417
- Speed limits near schools, penalties for violation doubled and disposition of fine proceeds, Ch. 232
- State officers and employees, private vehicle use — clarification of reimbursement rate for, Ch. 112
- Taxes and fees, fund transfers related to — technical corrections, Ch. 325
- Travel trailers, definition revised, Ch. 241
- Triple-trailer truck configurations, revising length limits, Ch. 509
- U.S. Highway 93 to within 10 miles of Canadian border, exempting vehicles from weight limits determined by federal bridge formula and voiding act if exemption would result in sanction of federal highway funds, Ch. 342
- Vehicular homicide while under the influence, offense of — creation, Ch. 426
- Wheelchairs, clarification that they are not vehicles or motor vehicles, Ch. 233

MUNICIPAL COURTS

- Multiple sessions, departments, chief judge, part-time assistant judge, and revising qualifications of replacement for disqualified or sick judge — providing for, Ch. 167

MUSEUMS

- Montana Agricultural Center and Museum of the Northern Great Plains, transfer of ownership, Ch. 98
- Procurement, state — exemption of art purchased or commissioned for museum or public display, Ch. 289

- N -

NATIONAL GUARD, See generally MILITARY AFFAIRS

NATURAL RESOURCES

- Natural resource damage assessment and litigation, extension of appropriation, Ch. 160

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF

Appropriations, Ch. 295, Ch. 307, Ch. 308, Ch. 309, Ch. 459, Ch. 499,
Ch. 522, Ch. 560, Ch. 580, Ch. 607

Director, appointment, SR 13

Flathead Basin Commission, transfer to department made permanent,
Ch. 387

Hungry Horse Dam, urging department to enter negotiations to
determine availability and cost of water stored behind dam for possible
contract to support future water development and existing water use
in Clark Fork River basin, HJR 3

Loans from INTERCAP program, reauthorization, Ch. 8

Regional water authorities, specific — general obligation bond proceeds
for, Ch. 522

State lands, responsibilities, See generally STATE LANDS

Water use, responsibilities, See generally WATER USE

NEPOTISM

County commissioners, board of — appointment of relatives to positions
within county, exempting certain counties from restriction, Ch. 316

9-1-1 EMERGENCY TELEPHONE SYSTEM

Wireless enhanced 9-1-1 system, statewide — request for interim study of
options for funding mechanisms and allocations for deployment,
HJR 45

NONPROFIT CORPORATIONS

Health entity, conversion to for-profit corporation or entity or mutual
benefit corporation or entity — regulation, Ch. 214

State-owned historic sites or buildings, management — allowing biennial
review rather than quarterly audit of funds by historical society,
Ch. 10

NOTARIES PUBLIC

Notarial seal to use words “notary public” instead of words “notarial seal”,
Ch. 123

NOXIOUS WEEDS AND NOXIOUS WEED CONTROL

Agricultural research stations, state and federal, and tribal agricultural
research programs — urging cooperative research efforts and sharing
of educational information to facilitate ongoing research, sharing of
scientists, and educational efforts in addressing critical issues, HJR 11

Noxious weed management trust fund, creation, Constitutional
Amendment No.40(Appendix)
implementation, Ch. 472

Public purchase or receipt of property, inspection requirements and weed
management plan, Ch. 395

Vehicle taxes and fees, fund transfers related to — technical corrections,
Ch. 325

NURSING AND NURSES

Licensed practical nursing application fee to be nonrefundable and
revising references to supervision for nurse-midwives, Ch. 126

NURSING, BOARD OF

Appointments to, SR 4, SR 11

Membership revised, Ch. 126

NURSING HOME ADMINISTRATORS, BOARD OF
Appointments to, SR 4

- O -

OBLIGATIONS

Transfer provisions, clarification, Ch. 392

OCCUPATIONAL DISEASE

Claims examiners, distinguishing from claims adjusters under insurance
laws and providing definition for, Ch. 140

Independent contractor certification requirements, revision, Ch. 448

Reporting requirements, clarification of filing requirement and providing
rulemaking authority, Ch. 103

Workers' compensation, merging occupational disease provisions into,
Ch. 416

OCCUPATIONAL THERAPY PRACTICE, BOARD OF

Appointments to, SR 4, SR 19

OIL AND GAS, See also TAXATION, MINERALS

Natural gas pipeline safety provisions and regulations, penalties
increased for violations, Ch. 124

Natural gas royalty owners, requiring producers to itemize charges
assessed to, Ch. 19

Oil or gas well facilities — defining term, delaying requirement for air
quality permit, adoption of rules for regulation until permit issued,
and transferring rulemaking authority, Ch. 236

Property taxation of oil and natural gas property, interim study
requested, HJR 44

Split estates of mineral and surface owners related to oil and gas
development and coal bed methane reclamation and bonding, interim
study by environmental quality council, Ch. 527

OIL AND GAS CONSERVATION, BOARD OF

Appointments to, SR 16

Oil and gas production, enacting tax that ties to unused portion of tax
rate authority of board, Ch. 603

OPEN MEETINGS

Supreme court meetings, clarification pertaining to, Ch. 218

OPEN-SPACE LANDS

Conservation easements and property tax policy issues associated with,
requesting performance audit of extent, SJR 20

Real property converted or diverted from use, time period extended,
Ch. 88

OPTOMETRY, BOARD OF

Appointments to, SR 4, SR 19

OUTFITTERS AND GUIDES

Licenses

guides or professional guides, clarification of qualifications, Ch. 172
outfitters, provisions revised and clarified, Ch. 197

Publication requirement for names and addresses removed, Ch. 467

OUTFITTERS, BOARD OF
Appointments to, SR 5

- P -

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION
PLANNING COUNCIL
Members, appointment, SR 13

PAIN AND SYMPTOM MANAGEMENT, STATEWIDE TASK FORCE
Formation acknowledged, recognizing role that will be played in funding
and support by american cancer society, and encouraging wide
dissemination of report and recommendations of task force to ensure
acceptance and implementation by health care professionals and
public policymakers, SJR 28

PARDONS AND PAROLE, BOARD OF
Appointments to, SR 8, SR 17

PARENT AND CHILD
Day-care facilities, prohibiting administration of medicine to child
without proper authorization from child's parent or guardian, Ch. 270
Schools, allowing self-administration of asthma medication by pupils —
notice to parent that school district not liable for injury, Ch. 306

PARKS AND RECREATION
Churches, tax exemption provision extended to educational or youth
recreational facilities open to public, Ch. 584
County park districts
dissolution, clarifying security of bonds following, Ch. 451
purchase of real property for use as park and recreation land with
concurrence of county governing body, allowing, Ch. 175
Federal Lands Recreation Enhancement Act, urging congress to repeal,
HJR 13
Fire seasons, provisions revised and allowing small recreational fires.
Ch. 492
Greater Yellowstone area, elimination of brucellosis in bison and elk
herds — urging u.s. secretaries of agriculture and interior to direct
appropriate federal agencies to expedite and urging u.s. department of
agriculture as lead agency in elimination plan, HJR 22
Great Plains Dinosaur Park in Malta, creation and funding, Ch. 485
Highway, road, or right-of-way that provides existing legal access to
public land or public waters including access for public recreational
use — abandonment clarified, Ch. 168
State parks
lost creek state park, allowing limited development to include camp
host pad, Ch. 234
motor vehicle registration fee, providing for direct deposit, Ch. 542
State recreational boating safety program — making permanent the
department of fish, wildlife, and parks authority to contract with
counties for administration, Ch. 322

PARTNER OR FAMILY MEMBER ASSAULT, See DOMESTIC VIOLENCE

PARTNERSHIPS

Foreign limited partnership registration, specifying requirements for, Ch. 71

Name, revising certain procedures for filing applications regarding and eliminating certain requirements regarding filing of certain copies with respect to, Ch. 71

PATRIOT ACT

Actions taken by federal government under act, requesting attorney general to compile and disseminate relevant information regarding and encouraging congressional delegation to support and ensure civil rights of all citizens which includes allowing act to expire, SJR 19

PEACE OFFICERS, See also LAW ENFORCEMENT

Arrest or citation quotas prohibited, Ch. 242

Retirement system, administrative provisions revised, Ch. 329

PEARL HARBOR MEMORIAL COMMITTEE

Elimination, Ch. 25

PEDESTRIANS

Wheelchairs, persons using to be considered pedestrians and clarification of provisions, Ch. 233

PERSONNEL APPEALS, BOARD OF

Appointments to, SR 8, SR 18

PESTICIDES, PESTS, AND PEST CONTROL

Agricultural research stations, state and federal, and tribal agricultural research programs — urging cooperative research efforts and sharing of educational information to facilitate ongoing research, sharing of scientists, and educational efforts in addressing critical issues, HJR 11

PETROLEUM TANK RELEASE COMPENSATION BOARD

Loan from INTERCAP program, reauthorization, Ch. 8

Membership revised and requiring analysis and report on viability of petroleum tank release cleanup fund, Ch. 356

PHARMACY AND PHARMACISTS

Ephedrine and pseudoephedrine, provisions for regulation, Ch. 572

Medical Care Discount Card and Pharmacy Discount Card Act, Ch. 456

Prescription drugs — state pharmacy access program to complement medicare part D program, consumer information and technical assistance program and education outreach for consumers and professionals, and state pharmacy discount program, Ch. 287, See also DRUGS AND CONTROLLED SUBSTANCES AND DEVICES

Prescriptions, unreadable — civil penalty, Ch. 436

PHARMACY, BOARD OF

Appointments to, SR 4

PHYSICAL THERAPY AND PHYSICAL THERAPISTS

Licensure exemption removed and topical medication packaging and labeling requirement references revised, Ch. 126

PHYSICAL THERAPY EXAMINERS, BOARD OF

Appointments to, SR 4

PHYSICIAN ASSISTANTS-CERTIFIED

Revision of provisions generally, Ch. 519

PHYSICIANS AND SURGEONS

- Anatomic pathology services, direct billing provisions, Ch. 266
- Federally employed physicians, revising licensure references, Ch. 126
- Independent medical examination, performing at request of third party — duty of care, Ch. 246
- Marijuana, medical use provisions, Initiative No.148(Appendix)
- Prescriptions, unreadable — civil penalty, Ch. 436

PIPELINES

- Natural gas pipeline safety provisions and regulations, penalties increased for violations, Ch. 124

PLUMBERS, BOARD OF

- Appointments to, SR 5, SR 19

POLICE

- Monthly compensation, increasing amount deducted for premiums on group life insurance and for representation by police protective association, Ch. 179
- Public intoxication and treatment of alcoholism statutes, eliminating requirement that police take persons into protective custody, Ch. 442
- Strikes prohibited and providing for binding arbitration in labor negotiations, Ch. 225

POLICE OFFICERS' RETIREMENT SYSTEM, LOCAL FUNDS

- Administrative provisions revised, Ch. 329

POLICE OFFICERS' RETIREMENT SYSTEM, STATE PLAN

- Administrative provisions revised, Ch. 329
- Benefits payable to dependent child must be paid to a trust in certain circumstances, Ch. 369

POLITICAL PRACTICES, COMMISSIONER OF

- Appointment, SR 8
- Appropriations, Ch. 295, Ch. 607
- Public officers' or employees' conflicts of interest, certain disclosures to be made to commissioner rather than secretary of state, Ch. 65
- Qualifications and restrictions, establishment, Ch. 479

POULTRY

- Concentrated animal feeding operations, regulation, Ch. 403
- Country of Origin Placarding Act, Ch. 279

POWER OF ATTORNEY, STATUTORY

- Fiduciary responsibility of agent to principal, delineation, Ch. 159

PREDATORS AND PREDATOR CONTROL

- County predatory animal control funds
 - interest earned on funds to be deposited in funds, Ch. 12
 - money from any source may be deposited in, Ch. 176
- Federal predator control, clarifying state's rights and remedies to request and to exercise rights and remedies to prevent and control damage or conflict on public or private land caused by predatory animals and urging congressional delegation to obtain funding and assistance for citizens and communities adversely affected by federal wolf reintroduction, HJR 29

PRESCRIPTION DRUGS, See DRUGS AND CONTROLLED SUBSTANCES AND DEVICES

PRESERVATION REVIEW BOARD

Appointments to, SR 7

PRISONS, See CORRECTIONAL FACILITIES

PRIVACY

Health care facilities that record health care emergency telephone communications made to, crime of violating privacy in communications not committed, Ch. 435

PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS, BOARD OF

Provisions for, Ch. 294

PRIVATE INVESTIGATORS AND SECURITY PERSONNEL

Revision of provisions generally, Ch. 126

PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF

Appointments to, SR 8

PROBATION, PAROLE, AND CLEMENCY

Day reporting programs, contracts with Montana corporations to operate to provide alternate sentencing option and to sanction probation violators and providing presentence report fee to fund alternate option, Ch. 517

Supervisory fees, collection responsibility transferred, Ch. 473

PROFESSIONAL AND OCCUPATIONAL LICENSING AND REGULATION

Boards and programs dedicated to public service — request for interim study of methods to increase responsiveness, effectiveness, and efficiencies, SJR 35

Revision and consolidation of laws, Ch. 126, Ch. 467

PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS

Licensing laws revised, Ch. 260

PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF

Appointments to, SR 5

PROPERTY, PRIVATE

Harvest heritage, preservation — right to trespass on private property not created, Constitutional Amendment No.41(Appendix)

Hunting on, lawful method of, Ch. 164

PROPERTY, TAXATION, See TAXATION, PROPERTY

PROSECUTION SERVICES IN MONTANA

Interim study to review delivery and whether changes may be appropriate, request for, SJR 40

PROVIDER RATES AND SERVICES, COMMISSION ON

Creation, Ch. 520

PSYCHOLOGISTS, BOARD OF

Appointments to, SR 4

PSYCHOLOGY AND PSYCHOLOGISTS

License exemption references revised and definition of “social psychologist” deleted, Ch. 126

PUBLIC ACCOUNTANTS, BOARD OF

- Appointments to, SR 5

- Membership expanded, Ch. 126

- Nonresident certified public accountants, special practice permit and registration requirements, Ch. 541

PUBLIC ASSISTANCE

- Children's health insurance program (CHIP)

 - administration provisions, revision, Ch. 565

 - application form, simplified — requirement repealed, Ch. 152

 - health and medicaid initiatives account, funding from, Initiative No.149(Appendix)

 - tribal governments, exploration of possibilities for leverage of federal financial participation, Ch. 128

- Electronic transfer, allowing payment of grants by, Ch. 94

- Food stamps, felony drug offenders exempt from federal prohibition on eligibility under certain conditions, Ch. 230

- Health and medicaid initiatives account, funding from, Initiative No.149(Appendix)

- Medicaid

 - children, eligibility determinations revised and appropriation for services, Ch. 502

 - congress urged to maintain integrity of program and to not support proposed program reductions included in executive budget request, SJR 30

 - cost of services and departmental budget, requiring reports be provided to legislative finance committee, Ch. 380

 - developmental disabilities, persons with — pilot program for use of funds not expended for provision of basic health and safety services, Ch. 304

 - fraud, clarification and/or removal of provisions, Ch. 185

 - funding principles, incorporation for purposes of, Ch. 530

 - health and medicaid initiatives account, funding from, Initiative No.149(Appendix)

 - home and community-based services

 - federal waiver of medicaid state plan, permission to seek, Ch. 72

 - medicaid money, funded with — implementation of certain recommendations of Montana public health care redesign project regarding programs, Ch. 353

 - indian tribes, tribal health care facilities, and indian health service health care facilities — program specifically involving, implementation of recommendations to redesign, Ch. 128

 - long-term care insurance partnerships allowed by federal law or waiver, implementation allowed, Ch. 406

 - nursing facilities, funding for increases in payments to, Ch. 523

 - prescription drug expansion program amended as state pharmacy discount program, Ch. 287

 - provider claims, postpayment audits, and recoupment of overpayments — department requested to review rules governing, HJR 32

 - report requirements revised, Ch. 380

 - school district cooperative employee benefits paid from miscellaneous programs fund with money from medicaid program, retirement fund charged for retirement benefits, Ch. 405

PUBLIC ASSISTANCE (Continued)

Medicaid (Continued)

- small business health insurance pool, funding for employee premium assistance, Ch. 595

- Mental health commitment proceedings — public assistance program responsible for precommitment detention, examination, and treatment costs, Ch. 480

- Montana parents as scholars program, Ch. 184

- Montana public health care redesign project, implementation of certain recommendations and authority for establishment of health insurance flexibility and accountability demonstration initiatives and other demonstration projects, Ch. 350

Temporary assistance for needy families (TANF)

- child support pass-through payment and income disregard, Ch. 558

- felony drug offenders exempt from federal prohibition on eligibility under certain conditions, Ch. 230

- Montana parents as scholars program, funding with maintenance of effort funds, Ch. 184

PUBLIC ASSISTANCE, BOARD OF

- Appointments to, SR 18

PUBLIC CONTRACTS

- Administrative rule economic impact statements, inclusion of providers of services under contracts with state as affected class of persons for purposes of, Ch. 265

- Alternative project delivery contract process for construction projects, creation, Ch. 574

- Apprentice wage rate, establishment and tied to standard prevailing wage rate for construction services for prevailing wage rate district and excluding certain apprentice wages, Ch. 538

Construction contracts

- irrevocable letter of credit allowed as security for, Ch. 186

- notification and retainage, certain provisions revised, Ch. 244

- Local government's authority to enter certain contracts, providing legislative finding that it is within government's authority to enter, Ch. 198

Procurement, state

- public defender system, exemptions, Ch. 449

- revision of provisions generally, Ch. 289

- Special fuel on which state fuel tax has been paid, requiring that material used in work performed under public contract be produced using, Ch. 384

PUBLIC DEFENDER SYSTEM

- Establishment, Ch. 449

PUBLIC EDUCATION, BOARD OF

- Accreditation standard amendments, submission to legislative committee for review and determination of fiscal impact for inclusion in executive budget, Ch. 208

- Appointments to, SR 7, SR 16

- Appropriation, Ch. 607

- Braille instruction for impaired children, standards for personnel providing, Ch. 490

PUBLIC EDUCATION, BOARD OF (Continued)

Health enhancement in schools, encouraging board to consider benefits of increasing and encouraging schools to provide students with more opportunities for physical activity, HJR 17

PUBLIC EMPLOYEES' RETIREMENT BOARD

Loan from INTERCAP program, reauthorization, Ch. 8

Police fund information, local — revising deadline for submission, Ch. 329

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Administrative provisions revised, Ch. 329

Defined contribution plan, clarification of certain provisions, Ch. 329

Disability benefits, clarification, Ch. 329

Public employee retirement funds — requesting interim study on how funds are invested and how investment performance, retirement benefits, and legislative policy decisions interact to affect actuarial soundness, HJR 42

PUBLIC HAZARDS

Concealment by final order or judgment or written final settlement agreement prohibited, Ch. 390

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Appropriations, Ch. 295, Ch. 439, Ch. 459, Ch. 501, Ch. 502, Ch. 523, Ch. 560, Ch. 601, Ch. 607

Asbestos disease account, creation and appropriation for grants to lincoln county health board, Ch. 601

Cervical cancer, task force on — creation, Ch. 404

Child abuse and neglect provisions, responsibilities, See generally CHILD ABUSE AND NEGLECT

Children's health insurance program (CHIP), responsibilities, See PUBLIC ASSISTANCE

Child support enforcement, responsibilities, See generally CHILD SUPPORT ENFORCEMENT

Developmental disabilities, persons with — responsibilities, See generally DEVELOPMENTAL DISABILITIES, PERSONS WITH

Director, appointment, SR 14

Health and medicaid initiatives account, See HEALTH AND MEDICAID INITIATIVES ACCOUNT

Health care facility provisions, See generally HEALTH CARE FACILITIES

Long-term care facility surveys and informal dispute resolution, providing timeframes for results of, Ch. 514

Medicaid, See PUBLIC ASSISTANCE

Mentally ill or incapacitated persons, responsibilities, See generally MENTALLY ILL OR INCAPACITATED PERSONS

Montana youth leadership forum for students with disabilities including Indian students on reservations, provision for and funding, Ch. 501

Provider Rates and Services, Commission on — creation, Ch. 520

Public assistance, responsibilities, See generally PUBLIC ASSISTANCE

Small business health insurance pool, authorizing pursuit of medicaid funding for employee premium assistance, Ch. 595

Smoking prohibited in all places where public is free to enter, rulemaking, Ch. 268

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Continued)

- Substance abuse and especially methamphetamine use, urging continued efforts toward intraagency and interagency prevention coordination and support of interagency efforts to assist Montanans in need, HJR 1
- Tattooing and body-piercing establishments, licensure and regulation provisions, Ch. 386
- 2-1-1 telephone number, statewide — provisions for, Ch. 548

PUBLIC LANDS

- Federal predator control, clarifying state's rights and remedies to request and to exercise rights and remedies to prevent and control damage or conflict on public or private land caused by predatory animals and urging congressional delegation to obtain funding and assistance for citizens and communities adversely affected by federal wolf reintroduction, HJR 29
- Highway, road, or right-of-way that provides existing legal access to public land or public waters including access for public recreational use — abandonment clarified, Ch. 168
- Roads and access to, congress urged to adopt legislation requiring u.s. forest service and bureau of land management to not arbitrarily close, HJR 18

PUBLIC OFFICERS OR EMPLOYEES

- Casket of public official, allowing Montana flag to be draped over, Ch. 219
- Collective bargaining for public employees, clarifying definition of "supervisory employee", Ch. 483
- Conflicts of interest, certain disclosures to be made to commissioner of political practices rather than secretary of state, Ch. 65
- Military leave provisions, clarification and updating, Ch. 381
- Montana products, electronic directory — exemption from public employee conduct standards, Ch. 173
- Public service announcements featuring candidate for office, prohibiting use of state funds for, Ch. 145
- Sick leave, revision of laws governing, Ch. 582
- State employees, specific legislation relating to
 - motor vehicles, private vehicle use by officers and employees — clarification of reimbursement rate for, Ch. 112
 - pay increase for first complete pay period that includes January 1, 2005 applies to all employees, provision for, Ch. 238
 - pay plan, Ch. 6
 - relocation expenses of employees whose positions are eliminated, removal of requirement that state agencies must pay, Ch. 111
- Student intern, definition in context of state employment, Ch. 75
- Telework authorized and encouraged, Ch. 56
- Timber, taking for purposes of highway — clarifying damages to be awarded, Ch. 239
- Voluntary Employees' Beneficiary Association (VEBA), definition of "employer" revised, Ch. 96

PUBLIC SERVICE COMMISSION

- Appropriation, Ch. 607
- Fees charged by, provisions revised, Ch. 224

PUBLIC SERVICE COMMISSION (Continued)

Legislative Energy and Telecommunications Interim Committee to have certain review, program evaluation, and monitoring functions for, Ch. 221

Montana Renewable Power Production and Rural Economic Development Act, implementation and enforcement, Ch. 457

Records and reports, period of withholding from public eliminated and scope of protective orders expanded, Ch. 144

Rural transportation providers, exemption from commission authority, Ch. 82

Utilities, responsibilities, See generally UTILITIES

PUBLIC SERVICE REGULATION, DEPARTMENT OF

Fees charged by, provisions revised, Ch. 224

- Q -

QUALITY SCHOOLS INTERIM COMMITTEE

Establishment and duties, Ch. 371

- R -

RACIAL PROFILING

Revision of law prohibiting, Ch. 243

RADIOLOGIC TECHNOLOGISTS, BOARD OF

Appointments to, SR 4

Licensing requests, requiring action on and adoption of rules required, Ch. 491

RADIOLOGIC TECHNOLOGY AND RADIOLOGIC TECHNOLOGISTS

Industrial X-ray equipment operators, licensing exemption when, Ch. 126

Licensing and professional practices, revision, Ch. 491

RAILROADS

Amtrak passenger rail service through Montana, urging support for and continued funding, SJR 21

Local rail freight assistance programs, appropriation of federal funds received for, Ch. 496

Montana Essential Freight Rail Act revolving loan account, administration and loans from, Ch. 602

Tort action subject to Federal Employers' Liability Act and railroad as defendant, revising place of trial, Ch. 217

RAIL SERVICE COMPETITION COUNCIL

Creation and funding, Ch. 605

RAWHIDE STAMPEDE RUSTLERS AND RENDEZVOUS TRADE CORRIDOR

Establishment along State Highway 16 between Glendive and Port of Raymond, Ch. 362

REAL ESTATE APPRAISERS, BOARD OF

Appointments to, SR 5

REAL ESTATE BROKERS AND SALESPERSONS

Local government license fee or tax may not be imposed on, Ch. 400

REAL ESTATE BROKERS AND SALESPERSONS (Continued)

Property managers, clarifying duties of brokers or salespersons acting as,
Ch. 389

REALTY REGULATION, BOARD OF

Appointments to, SR 5

RECLAMATION AND DEVELOPMENT GRANTS PROGRAM

Appropriation for grants and temporary revision of use of account,
Ch. 308

RECREATION, See PARKS AND RECREATION

RECYCLING

Postconsumer glass in recycled material, use — air quality permit fee
credit revised, Ch. 129

REGENTS OF HIGHER EDUCATION, BOARD OF

Appointments to, SR 9, SR 10, SR 16

Dental school feasibility study, appropriation for, Ch. 339

Family education savings trust, role established, Ch. 549

Governor's postsecondary scholarship program, administration, Ch. 489

National guard, qualified members — waiver of university system tuition,
Ch. 577

RENAL DISEASE PROGRAM

Voluntary income tax checkoff to fund, Ch. 535

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Alternative renewable energy projects, clarification of eligibility for,
Ch. 117

Appropriations for grants and loans and temporary revision of use of state
special revenue account, Ch. 307, Ch. 309

Water users' association or ditch company loans and loans to other
persons, limit increased, Ch. 418

RESOLUTIONS

Agricultural land — requesting interim study of classification, valuation,
and taxation of, HJR 43

Agricultural research stations, state and federal, and tribal agricultural
research programs — urging cooperative research efforts and sharing
of educational information to facilitate ongoing research, sharing of
scientists, and educational efforts in addressing critical issues, HJR 11

American Legion urged to adopt a wood bat only rule for American Legion
baseball, HJR 19

Amtrak passenger rail service through Montana, urging support for and
continued funding, SJR 21

Asbestos

federal legislation that would pay compensation to victims, urging
congressional delegation to oppose unless legislation ensures that
residents of libby, Montana, are included within terms of
legislation and receive compensation, SJR 27

illness related to, urging support for creating center for study and
treatment and for providing relief for victims of asbestos exposure
in libby, Montana, SJR 26

RESOLUTIONS (Continued)

- Beef industry, urging u. s. department of agriculture to refer to industry as united states beef industry and to refrain from referring to it as north american beef industry, HJR 5
- Birth certificates issued by states, federal legislation establishing standards for — requesting congressional delegation to oppose, HR 2
- Bonneville Power Administration, proposals to transition from cost-based rates to market-based rates and accelerate debt repayment — rejection urged, SJR 31
- Canada, resumption of live cattle trade with — urging congress to reject until Montana producers and consumers can be assured that food supply is safe from BSE and cattle industry will not be harmed, HJR 7
- Child protective services system, interim study requested, SJR 37
- Civic education in Montana's elementary and secondary schools, promotion, SJR 12
- Community mental health crisis response systems, interim study requested, SJR 41
- Conservation easements and property tax policy issues associated with, requesting performance audit of extent, SJR 20
- Distributed energy generation, requesting interim study to investigate potential benefits of and obstacles to expanding, SJR 36
- Energy planning and coordinating entity, ongoing — requesting interim study to evaluate possible creation of, SJR 39
- Federal funds, requesting interim study of state's reliance on and use of and implication of federal budget deficits on state programs, HJR 26
- Federal highway program, urging congress to pass a well-funded, multiyear program in timely manner, SJR 22
- Federal Lands Recreation Enhancement Act, urging congress to repeal, HJR 13
- Federal predator control, clarifying state's rights and remedies to request and to exercise rights and remedies to prevent and control damage or conflict on public or private land caused by predatory animals and urging congressional delegation to obtain funding and assistance for citizens and communities adversely affected by federal wolf reintroduction, HJR 29
- Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7
- Fort Peck Reservoir, Montana's congressional delegation urged to introduce and support legislation requiring u.s. army corps of engineers to increase and maintain minimum pool elevation, HJR 4
- Governor's appointments, senate concurrence, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 13, SR 14, SR 15, SR 16, SR 17, SR 18, SR 19
- Hungry Horse Dam, urging department of natural resources and conservation to enter negotiations to determine availability and cost of water stored behind dam for possible contract to support future water development and existing water use in clark fork river basin, HJR 3

RESOLUTIONS (Continued)

- Hunting license preferences for landowners, requesting interim study to review programs and statutes of various states in creating, HJR 30
- Hypersonic wind tunnel in Butte, pilot-scale — urging support for, HJR 16
- Identity theft, requesting interim study of issues related to, SJR 38
- Indian tribes
 - economic development, requesting interim study for investigation of special challenges and opportunities for, HJR 41
 - secured transaction commercial codes, urging adoption by tribal governments and encouraging development of training programs for tribal courts on use, SJR 4
- International trade agreements, affirming legislature's desire to be consulted on provisions of and requesting congressional delegation to promote protections for and best interests of state in negotiation of agreements, SJR 23
- Legislature, rules to govern proceedings
 - house, HR 1
 - joint, SJR 1
 - senate, SR 1
- Lewis and Clark expedition in Montana, commemoration of bicentennial, HJR 24
- Low-income Montanans' access to Montana civil legal system and determination of whether changes are appropriate, interim study requested, SJR 6
- Medicaid
 - congress urged to maintain integrity of program and to not support proposed program reductions included in executive budget request, SJR 30
 - provider claims, postpayment audits, and recoupment of overpayments — request for department of public health and human services to review rules governing, HJR 32
- Montana Miners' Day, June 26, 2005, designated as, SJR 29
- Montana National Guard, requesting interim study regarding missions and operation for purposes of state active duty performed to meet state emergencies, SJR 14
- National guard, army and air — conveying highest honor and deepest respect for service and sacrifice of members who have been called to federal active duty in the war on terror, SJR 42
- Oil and natural gas property, property taxation of — interim study requested, HJR 44
- Pain and Symptom Management, Statewide Task Force on — formation acknowledged, recognizing role that will be played in funding and support by american cancer society, and encouraging wide dissemination of report and recommendations of task force to ensure acceptance and implementation by health care professionals and public policymakers, SJR 28
- Patriot Act, actions taken by federal government under — requesting attorney general to compile and disseminate relevant information regarding and encouraging congressional delegation to support and ensure civil rights of all citizens which includes allowing act to expire, SJR 19

RESOLUTIONS (Continued)

- Professional and occupational licensing boards and programs dedicated to public service — request for interim study of methods to increase responsiveness, effectiveness, and efficiencies, SJR 35
- Prosecution services and county civil legal services by county attorneys in Montana, requesting interim study to review delivery and whether changes may be appropriate, SJR 40
- Public Education, Board of — encouraging board to consider benefits of increasing health enhancement in schools and encouraging schools to provide students with more opportunities for physical activity, HJR 17
- Public employee retirement funds — requesting interim study on how funds are invested and how investment performance, retirement benefits, and legislative policy decisions interact to affect actuarial soundness, HJR 42
- Public lands, roads and access to — urging congress to adopt legislation requiring u.s. forest service and bureau of land management to not arbitrarily close, HJR 18
- Renewable energy production incentive and production tax credit programs, congress urged to support, SJR 17
- Resource indemnity trust, laws and funding related to — interim study requested, HJR 36
- Rotary International, recognizing contributions of and designating February 23, 2005, as rotary day in Montana, SJR 24
- Roundabouts instead of right-angle intersections, construction encouraged, HJR 12
- St. Mary diversion facilities, requesting federal funds for rehabilitation and urging support of Montana congressional delegation, SJR 9
- Scobey to Wolf Point, urging department of transportation to make specified improvements on road from, SR 3
- Sentencing practices and disproportionate representation of minorities in criminal justice and corrections systems, requesting interim study to review, HJR 15
- Subdivision review process, interim study requested, SJR 11
- Substance abuse and especially methamphetamine use, urging continued efforts toward intraagency and interagency prevention coordination and support of interagency efforts to assist Montanans in need, HJR 1
- Superfund sites, identification of sites in Montana and impacts on communities directly impacted by — interim study requested, HJR 34
- Taiwan, urging permitted participation in activities of world health organization, SJR 13
- Timber, contract harvesting from state lands — request for interim study of issues related to, HJR 33
- U.S. Department of Agriculture urged to locate its rural development satellite offices in rural Montana, HJR 6
- Wildland fires — requesting interim study to develop, consolidate, and update fire-related statutes in order to improve suppression and mitigation, to address dangerous conditions arising from drought and forest fuels, and complications and costs of fighting fires in wildland/urban interfaces, HJR 10
- Wireless enhanced 9-1-1 emergency telephone system, statewide — request for interim study of options for funding mechanisms and allocations for deployment, HJR 45

RESOLUTIONS (Continued)

Yellowstone area bison and elk herds, elimination of brucellosis — urging u.s. secretaries of agriculture and interior to direct appropriate federal agencies to expedite and urging u.s. department of agriculture as lead agency in elimination plan, HJR 22

RESORT TAX

Resort area district board election laws, revision, Ch. 393

RESOURCE INDEMNITY TRUST

Interim study of laws and funding related to, request for, HJR 36

RESPIRATORY CARE PRACTITIONERS, BOARD OF

Appointments to, SR 4, SR 18

RETAIL ESTABLISHMENTS

Ephedrine and pseudoephedrine sales, regulation, Ch. 572

RETIREMENT, See specific retirement system

REVENUE, DEPARTMENT OF

Alcoholic beverages, responsibilities, See generally ALCOHOLIC BEVERAGES

Appropriations, Ch. 295, Ch. 607

Cigarette and other tobacco product laws, enforcement and other laws revised, Ch. 511

Director, appointment, SR 13

POINTS replacement system, removing authority to establish fee to recover costs associated with and providing voidness provision contingent on repayment of loan through state general fund money, Ch. 550

Revenue and Transportation Interim Committee and Legislature, reporting to — eliminating certain requirements, Ch. 318

Secretary of state, list of certain entities furnished by — frequency increased, Ch. 273

Taxation, responsibilities, See specific TAXATION heading

Unemployment insurance functions transferred from contribution, Ch. 466
tax administration, Ch. 67

Water adjudication fees, collection provisions, Ch. 288

RIVERS AND STREAMS

Clark Fork River Basin Task Force, provisions made permanent and providing direction on future responsibilities, Ch. 434

Flathead Lake and River drainage — recognizing importance of transboundary region, urging governor to negotiate operating agreement with british columbia, and urging environmental assessment prior to final decision on coal bed methane and other hydrocarbon development in the valley of flathead river and adjacent environs, SJR 7

Hungry Horse Dam, urging department of natural resources and conservation to enter negotiations to determine availability and cost of water stored behind dam for possible contract to support future water development and existing water use in clark fork river basin, HJR 3

St. Mary diversion facilities, requesting federal funds for rehabilitation and urging support of Montana congressional delegation, SJR 9

RIVERS AND STREAMS (Continued)

Smith River corridor enhancement account, directing expenditure of
portion for preservation and enhancement of corridor, Ch. 86

ROTARY INTERNATIONAL

Recognition of contributions of and designation of February 23, 2005, as
Rotary Day in Montana, SJR 24

RURAL SPECIAL IMPROVEMENT DISTRICTS

Creation and protest requirements revised, Ch. 488
Creation and resolution provisions revised, Ch. 529
Protest period, clarification, Ch. 451

- S -

SANITARIANS, BOARD OF

Appointments to, SR 5
Membership expanded, Ch. 126

SCHOOL DISTRICTS AND TRUSTEES, See also other SCHOOL headings

Bond issue or levy submitted to electors, including dissemination of
information related to as “properly incidental to another activity
required or authorized by law”, Ch. 437
Braille services and instruction for impaired children, provisions for,
Ch. 490
Bus routes, extending across another school district allowed when,
Ch. 508
Clerk of district, cash demands — requiring minimum of 30-hour
notification to county treasurer, Ch. 196
Consolidation and annexation provisions revised, Ch. 510
Enrollment, revision of certain provisions related to, Ch. 215
False claim against governmental entity, providing for civil action against
person making, Ch. 465
High school districts, governance structure and classification clarified for
certain districts, Ch. 91
Immunization records, requiring retention of certified copies for children
who have transferred to another district, Ch. 156
Lease of personal property allowed, Ch. 462
Meetings of trustees allowed in any building accessible to public, Ch. 438
Offsite instructional setting of educational services by district, Ch. 570
School calendars, providing flexibility in setting, Ch. 138
Student construction projects, limiting liability resulting from, Ch. 521
Subdividers allowed to donate land to district to fulfill park dedication
requirements, Ch. 333
Tuition provisions, revision, Ch. 463
Wind generation, commercial facilities — impact fee for districts impacted
by construction, Ch. 563

SCHOOL ELECTIONS

Bond election, more than one mail ballot election on same day allowed,
Ch. 264
Bond issue or levy submitted to electors — including dissemination of
information by trustees, school superintendent, or designated
employee in district with no superintendent as “properly incidental to
another activity required or authorized by law”, Ch. 437

SCHOOL ELECTIONS (Continued)

Bond propositions, approval by majority vote — authorizing issuance of bonds upon, Ch. 503

Consolidation election, time for holding, Ch. 510

Deadlines temporarily extended, Ch. 462

SCHOOL FINANCE, See also other SCHOOL headings

Average number belonging (ANB)

enrollment, conditions for inclusion in calculation, Ch. 215

offsite instructional setting, inclusion of pupils receiving, Ch. 570

per-ANB entitlement increased and three-year averaging provided for certain districts, Ch. 462

Basic entitlement, increase, Ch. 462

“Basic system of free quality public elementary and secondary schools” defined and provisions relating to, Ch. 208

Bonds, authorizing issuance upon approval by majority vote of electorate, Ch. 503

Cash demands to county treasurer, requiring minimum of 30-hour notification, Ch. 196

General fund budget, adoption for fiscal years 2006 and 2007 the greater of maximum general fund budget or highest actual budget adopted between fiscal years 2001 and 2005, Ch. 190

Guaranteed tax base aid payments affected by tax protests, adjustments for, Ch. 540

Quality Schools Interim Committee — determination of costs of basic system of free quality public elementary and secondary schools, determination of state’s share of costs, and construction of funding formula, Ch. 371

Retirement fund benefits for district or cooperative employees, clarification of payments for, Ch. 405

Revision of laws generally, Ch. 462

Special education students with disabilities who are under 6 years of age, funding ensured, Ch. 255

Tuition provisions, revision, Ch. 463

SCHOOLS, See also other SCHOOL headings

Accreditation standard amendments, submission by board of public education to legislative committee for review and determination of fiscal impact for executive budget, Ch. 208

Asthma medication, allowing self-administration by pupils, Ch. 306

“Basic system of free quality public elementary and secondary schools” defined and provisions relating to, Ch. 208

quality schools interim committee — determination of costs of system, determination of state’s share of costs, and construction of funding formula, Ch. 371

Braille services and instruction for impaired children, provisions for, Ch. 490

Civic education in Montana’s elementary and secondary schools, promotion, SJR 12

Deaf and Blind, Montana School for the, See DEAF AND BLIND, MONTANA SCHOOL FOR THE

Governor’s postsecondary scholarship program, Ch. 489

SCHOOLS (Continued)

- Health enhancement, encouraging board of public education to consider benefits of increasing and encouraging schools to provide students with more opportunities for physical activity, HJR 17
- Job Corps Program, prohibiting students from claiming the facility as student's residence for educational purposes, Ch. 132
- Pupil instruction days, hours required — revision in school term, day, and week, Ch. 138
- Smoking prohibited in all places where public is free to enter, Ch. 268
- Special education, revision of provisions generally, Ch. 255
- Speed limits near, penalties doubled for violation and disposition of fine proceeds, Ch. 232
- Student construction projects, limiting liability resulting from, Ch. 521

SCHOOL TRANSPORTATION, See also other SCHOOL headings

- Bus routes, school district extending across another school district allowed when, Ch. 508
- Bus safety, revision of provisions, Ch. 417
- Disability, child with — payment of costs for, Ch. 463
- Special education statutes to be consistent with other transportation statutes, Ch. 255

SEARCH AND RESCUE SURCHARGE

- Application clarified, Ch. 325
- Military Affairs, Department of — use provision revised, Ch. 326

SEARCH AND SEIZURE

- Searched premises, persons to be restrained in least restrictive manner consistent with safety of persons performing search, Ch. 153

SECRETARY OF STATE

- Administrative rules for effective administration of duties, clarifying authority for adoption, Ch. 370
- Agricultural liens, requiring central filing system for and designating office in which to file effective financing statement, Ch. 207
- Appropriations, Ch. 459, Ch. 607
- Corporations, limited liability companies, and partnerships — names, revising certain procedures for filing applications regarding and eliminating certain requirements regarding filing of certain copies with respect to, Ch. 71
- Elections, responsibilities, See generally ELECTIONS
- Public officers' or employees' conflicts of interest, certain disclosures to be made to commissioner of political practices rather than secretary of state, Ch. 65
- Revenue, Department of — list of certain entities furnished to, frequency increased, Ch. 273
- Small business licensing coordination program and center, applicants for license to be informed that they are required to obtain business name from secretary of state and eliminating requirement that secretary of state participate in program and on board of review, Ch. 427
- Tobacco products, persons soliciting business in state — agent for service of process, Ch. 511

SECURED TRANSACTIONS

Tribal governments urged to adopt commercial codes and encouraging development of training programs for tribal courts on use, SJR 4

SECURITIES AND SECURITIES REGULATION

Equity capital investor groups, application for securities exemption, Ch. 537

Insurer's securities, brokerage firms as custodian — indemnification agreements, Ch. 109

Living trusts, prohibiting sale to person for whom trust is not suitable — provision eliminated, Ch. 513

Revision of provisions administered by state auditor, Ch. 469

SENATE BILL TO CHAPTER NUMBER TABLE, See TABLE OF SENATE BILL TO CHAPTER NUMBER, printed separately in this volume

SENTENCING AND SENTENCES

Charge imposed upon conviction of misdemeanor or felony, increase, Ch. 361

Credit for each day of incarceration prior to conviction, changing from mandatory to discretionary the credit granted against the fine when fine levied in addition to term of imprisonment, Ch. 13

Day reporting programs, contracts with Montana corporations to operate to provide alternate sentencing option and to sanction probation violators and providing presentence report fee to fund alternate option, Ch. 517

Electronic audio-video communication, two-way — expanding authorized use to sentencing hearings, Ch. 222

Sentencing practices and disproportionate representation of minorities in criminal justice and corrections systems, requesting interim study to review, HJR 15

Sexual offenders designated as level 3 offenders, electronic monitoring program, Ch. 360

SESSION LAW TABLES, See TABLE OF SESSION LAWS AFFECTED and TABLE OF SESSION LAW TO CODE, printed separately in this volume

SEWAGE DISPOSAL AND SEWER SYSTEMS

City water service charges, delinquent — to become liens upon property served or to be collected as debt of property owner, Ch. 451

County water and/or sewer districts, revision of provisions generally, Ch. 341

SHERIFFS' RETIREMENT SYSTEM

Administrative provisions revised, Ch. 329

County detention officer membership provided, Ch. 259

Deputy sheriff injured in performance of duty, payment of partial salary — retirement contributions to be based on total compensation, Ch. 271

SILICOSIS

Benefits revised and appropriation for increase, Ch. 474

SMALL BUSINESSES

Alternative energy systems loan laws, revision, Ch. 110

Health insurance benefits, health and medicaid initiatives account — funding from, Initiative No.149(Appendix)

SMALL BUSINESSES (Continued)

Licensing coordination program and center, applicants for business license to be informed that they are required to obtain business name from secretary of state and eliminating requirement that secretary of state participate in program and on board of review, Ch. 427
“Made-in-Montana” products, state’s role in promotion — clarification, Ch. 248

SMALL BUSINESS HEALTH INSURANCE POOL

Creation, Ch. 595

SMOKING, See also generally CIGARETTES OR TOBACCO PRODUCTS

Prohibiting in all places where public is free to enter, Ch. 268

SNOWMOBILES

Registration fees, revision and clarification, Ch. 542

SOCIAL WORKERS

Publication of annual list, requirement removed, Ch. 467

SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS,
BOARD OF

Appointments to, SR 5, SR 19

SOLID WASTE MANAGEMENT SYSTEMS

Administrative penalties provided and venue provisions for enforcement actions amended, Ch. 443

Integrated waste management, redefining terms and establishing target rates for recycling and composting, Ch. 62

SPECIAL IMPROVEMENT DISTRICTS

Bonds — issuance of refunding bonds clarified and pooling of bonds and sidewalk, curb, gutter, or alley approach bonds authorized, Ch. 451

Protests involving projects, extending time for — when, Ch. 401

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Licensing laws revised, Ch. 262

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD
OF

Appointments to, SR 19

SPORTS AND SPORTING EVENTS

American Legion urged to adopt a wood bat only rule for American Legion baseball, HJR 19

STATE AUDITOR

Appropriation, Ch. 607

Health entity, nonprofit — conversion to for-profit corporation or entity or mutual benefit corporation or entity, approval, Ch. 214

Insurance provisions, responsibilities, See generally specific INSURANCE heading

Name, constitutional amendment to change to insurance commissioner, Ch. 269

STATE EMPLOYEES, See PUBLIC OFFICERS OR EMPLOYEES

STATE FINANCE

- Budget, See also INDEX TO APPROPRIATIONS, printed separately in this volume
 - administrative rule, emergency — may not be used to implement administrative budget reduction, Ch. 265
 - operating budgets and program transfers, significant changes — requiring reports to appropriate interim legislative committees, Ch. 58
 - school accreditation standards amendments, determination of fiscal impact for inclusion, Ch. 208
 - state prevention programs, interagency coordinating council for — requirement deleted for preparation and presentation of unified budget for state programs, Ch. 346
 - statewide information technology project budget summary, expanding type of proposed major projects to be included and revising required content, Ch. 106
- Federal mineral leasing funds, distinction between dedication and distribution clarified, Ch. 568
- Statewide cost allocation plan for state centralized services required to manage nongeneral funds, revision and simplification, Ch. 121

STATE GOVERNMENT

- Construction projects, alternative project delivery contract process — creation, Ch. 574
- False claim against governmental entity, providing for civil action against person making, Ch. 465
- False claims to agencies, expanding civil and criminal liability for making, Ch. 312
- Historical writings or documents, display in or on public buildings — governmental authority recognized, Ch. 372
- Loans to state agencies made under Municipal Finance Consolidation Act conditions, specifying, Ch. 399
 - INTERCAP program, from — reauthorization, Ch. 8
- Local governments making payments to state or state making payments to local government, electronic funds transfers required, Ch. 432
- Privatization of state services and privatization plans, revision of provisions, Ch. 285
- Telework authorized and encouraged, Ch. 56

STATE LANDS

- Administration provisions revised, Ch. 335
- Federal predator control, clarifying state's rights and remedies to request and to exercise rights and remedies to prevent and control damage or conflict on public or private land caused by predatory animals and urging congressional delegation to obtain funding and assistance for citizens and communities adversely affected by federal wolf reintroduction, HJR 29
- Historical writings or documents, display — governmental authority recognized, Ch. 372
- Historic right-of-way, extending time for application for, Ch. 57
- Leases, bid deposit increased, Ch. 89

STATE LANDS (Continued)

Surface leases, improvements — requiring explanation of requirements of fixing values by arbitration, requiring lessee to provide list of improvements and their value prior to renewal, information to be provided to party requesting to bid on lease, and changing court venue for contesting values, Ch. 476

Timber

commercial removal, application procedures revised, Ch. 101
contract harvesting, request for interim study of issues related to, HJR 33

STATE LIBRARY COMMISSION

Appointments to, SR 7, SR 17, SR 19
Appropriations, Ch. 459, Ch. 607

STATE POET LAUREATE

Honorary position, establishment and implementation, Ch. 115

STATE PREVENTION PROGRAMS, INTERAGENCY COORDINATING COUNCIL FOR

Unified budget for state programs, preparation and presentation — requirement deleted, Ch. 346

STATE PUBLIC DEFENDER, OFFICE OF

Appropriation, Ch. 607
Establishment, Ch. 449

STATE TREASURER

Local governments making payments to state or state making payments to local government, electronic funds transfers required, Ch. 432
Property tax, protested payments — receipt and disbursement provisions, Ch. 536

STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION

Duration extended, reducing quorum for, and appropriation for, Ch. 460

STATEWIDE MUTUAL AID SYSTEM ACT, Ch. 354

STREET MAINTENANCE DISTRICTS

Minor sidewalk repair to be included, Ch. 231
Zoning classification, use allowed as method for assessment of costs, Ch. 567

STREETS AND ALLEYS

Motorized nonstandard vehicle and electric personal assistive mobility device, definitions and provisions for operation, Ch. 468

STRUCTURED SETTLEMENT PROTECTION ACT, Ch. 351

SUBDIVISIONS

Review

local government, of proposed subdivisions — provisions revised, Ch. 298

process, interim study requested, SJR 11

Sanitation in, administrative penalties provided and venue provisions for enforcement actions amended, Ch. 443

School districts, allowing subdivider to donate land to district to fulfill park dedication requirements, Ch. 333

SUBDIVISIONS (Continued)

- Storm water drainage and municipal facilities, adequate — certified notice requirements changed and providing for certification that adequate facilities will be provided, Ch. 433
- Water and sanitation information, requirements for, Ch. 302
- Zoning regulations, divisions of land exempt from review are subject to, Ch. 252

SUPERFUND SITES

- Identification of sites in Montana and impacts on communities directly impacted by, interim study requested, HJR 34

SUPERINTENDENT OF PUBLIC INSTRUCTION

- Appropriations, Ch. 295, Ch. 459, Ch. 463, Ch. 607
- Disability, child with — payment of tuition and transportation costs, Ch. 463
- Offsite instructional setting of educational services by district, adoption of rules for, Ch. 570
- School tuition provisions, revision, Ch. 463
- Special education programs, recommendation and approval requirements removed, Ch. 255

SUPREME COURT

- Appropriation, Ch. 295
- Judicial Branch information technology, report to legislature on status and to coordinate with state strategic information technology plan, Ch. 445
- Open meeting law, clarification pertaining to court, Ch. 218
- Term of court, clarification, Ch. 328

SURETY BONDS

- County and city officers and employees, provisions revised, Ch. 209

- T -

TABLES

- The following is a list of supplementary tables printed separately in this volume:

CHAPTER NUMBER TO BILL NUMBER
 CODE SECTIONS AFFECTED
 EFFECTIVE DATES BY CHAPTER NUMBER and BY EFFECTIVE DATE
 HOUSE BILL TO CHAPTER NUMBER
 SENATE BILL TO CHAPTER NUMBER
 SESSION LAWS AFFECTED
 SESSION LAW TO CODE

TAIWAN

- World Health Organization, urging permitted participation in activities of, SJR 13

TATTOOING AND BODY-PIERCING ESTABLISHMENTS

- Licensure and regulation provisions, Ch. 386

TAX APPEAL BOARDS

- County Tax Appeal Board, applications automatically granted —
procedure clarified and authorizing appeal to state tax appeal board,
Ch. 533
- State Tax Appeal Board, appointments to, SR 8, SR 17
- Unemployment insurance benefit claimant, reporting of wages earned by
— eliminating requirement that state tax appeal board consider direct
appeal from department of revenue determination regarding, Ch. 67

TAXATION, CORPORATIONS

- Credits
 - biodiesel production facility, Ch. 524
 - developmental disability services account, contributions to —
extending termination date, Ch. 338
 - equity capital investment, Ch. 537
 - geothermal systems installed in residences, for persons constructing
residences, Ch. 455
 - motion picture and television production companies, employment
production and qualified expenditures, Ch. 593
 - oilseed crush facility, Ch. 524
 - public contractor's license tax on gross receipts, 5-year carryforward
allowed, Ch. 454
 - qualified endowment contributions, providing recapture in tax year of
recovery when, Ch. 4
 - reclaimable material, for investment in property to collect or process
— termination date extended, Ch. 569
 - small business health insurance premiums paid, Ch. 595
- Secretary of state, list of certain entities furnished by — frequency
increased, Ch. 273

TAXATION, ESTATES

- Federal return, filing provision clarified, Ch. 513

TAXATION, GASOLINE AND VEHICLE FUELS

- Alcohol distributors, payments to — reduction, Ch. 452
- Alcohol production, in-state investment — conditions revised, Ch. 452
- Biodiesel
 - fuel, tax incentives, Ch. 525
 - production incentive and corporation and individual tax credits for
production facilities, Ch. 524
- Dyed special fuel, increase in civil penalties and eliminating misdemeanor
penalty for using, Ch. 384
- Ethanol producers and facilities, tax incentives, Ch. 452
- Gasohol, taxing at 85% of tax rates — revising contingencies eliminating
provisions, Ch. 452
- Gasoline blended with ethanol, tax provisions revised, Ch. 452
- Motor fuel excise tax, local option — collection and refund issuance
responsibilities transferred, Ch. 539
- Oilseed crush facility, corporation and individual tax credits, Ch. 524
- Special fuel
 - agricultural products, user's temporary trip permit — establishment,
Ch. 397
 - permitholders and users, requirements governing — revision, Ch. 384

TAXATION, GENERAL PROVISIONS

- County treasurers, tax receipt notations by certain deadlines and demand for payment of road taxes — requirements removed and reporting deadlines changed, Ch. 189
- Developmentally disabled, intermediate care facility utilization fee — definition revised and fee increased, Ch. 377
- Family Education Savings Act, amendment to comply with federal securities requirements and establishing a family education savings trust, Ch. 549
- Hospital utilization fee, revision and extension and including critical access facilities in definition of “hospital”, Ch. 606
- Natural gas utility restructuring, tax revenue analysis provision eliminated, Ch. 107
- Nursing facility utilization fee, increase and use of revenue, Ch. 523
- Payment by credit card, debit card, or other commercially acceptable means allowed, Ch. 47
- Penalty and interest provisions, determination — revision and clarification, Ch. 594
- Public contractor’s license tax on gross receipts, 5-year carryforward for income and corporate tax credit, Ch. 454

TAXATION, INDIVIDUAL INCOME

- Credits
 - biodiesel production facility, Ch. 524
 - developmental disability services account, contributions to — extending termination date, Ch. 338
 - equity capital, Ch. 537
 - foreign countries, taxes imposed by — disallowing if federal income tax credit was taken, Ch. 95
 - motion picture and television production companies, employment production and qualified expenditures, Ch. 593
 - oilseed crush facility, Ch. 524
 - public contractor’s license tax on gross receipts, 5-year carryforward allowed, Ch. 454
 - qualified endowment contributions, providing recapture in tax year of recovery when, Ch. 4
 - reclaimable material, for investment in property to collect or process — termination date extended, Ch. 569
 - small business health insurance premiums paid, Ch. 595
- Military personnel, returns — extending due date for filing for those serving in combat zones or contingency operations and clarifying deferment of taxes for person in military service, Ch. 30
- National guard and reserve members, exemption for group life insurance premium reimbursements, Ch. 604
- Renal disease program, voluntary checkoff to fund, Ch. 535
- Withholding laws, revision and clarification, Ch. 67

TAXATION, MINERALS

- Bentonite, provisions revised and imposing production tax, Ch. 559
- Coal severance tax
 - allocations increased for specific account, Ch. 589
 - bonds, See BONDS AND BOND ISSUES
 - in-state electrical production, eliminating tax rate incentive for, Ch. 415

TAXATION, MINERALS (Continued)

Coal severance tax (Continued)

oil, gas, and coal natural resource account — establishment and allocation to, Ch. 603

Coal trust funds, See COAL TRUST FUNDS, CONSTITUTIONAL TRUST FUND

Metal mines license tax, disposition and use revised and clarified, Ch. 598

Oil and natural gas production taxes

clarification of payment reporting requirements and distribution of allocation to each county, Ch. 5

legislative services division, allocation for use by environmental quality council, Ch. 527

oil, gas, and coal natural resource account — establishment and allocation to, Ch. 603

stripper well bonus production, definition and tax rate, Ch. 592

Resource indemnity trust, laws and funding related to — interim study requested, HJR 36

TAXATION, PROPERTY

Agricultural land

interim study requested of classification, valuation, and taxation of, HJR 43

nonqualified, provisions for, Ch. 376

parcel of 20 acres or more but less than 160 acres, alternative method for assessment as, Ch. 543

Bentonite, exemption from net proceeds property tax, Ch. 559

Centrally assessed property, taxes or fees paid under protest — provisions clarified, Ch. 536

Classes 3, 4, and 10 — revaluation delayed by 1 year, Ch. 554

Class 8

rate reduction, clarification of data used for determination, Ch. 3

removing provision that would have phased out property contingent on certain increases in state wages and salaries and increasing cap on exempt aggregate market value, Ch. 531

Class 14, inclusion of wind generation facilities, Ch. 563

Condominium property, residential and commercial — clarification of appraisal method, Ch. 379

Conservation easements and property tax policy issues associated with, requesting performance audit of extent, SJR 20

Exemptions

amendment of laws relating to, Ch. 584

general recodification of laws concerning, Ch. 532

purely public charity, limiting land for exemption applied for after December 31, 2004, Ch. 2

Livestock per capita fee, interest earned on money in account to be deposited in account, Ch. 12

Manufactured homes, declaration as improvement to real property — procedures revised, Ch. 450

Military on active duty or hospitalized for duty-related injuries or illness, revising delayed payment without penalty or interest, Ch. 587

Notice of property tax, contents changed, Ch. 453

Oil and natural gas property, of — interim study requested, HJR 44

Payments, dishonored or fraudulent — penalty provisions, Ch. 392

TAXATION, PROPERTY (Continued)

Tax abatement for new and expanding industry, building remodeling, reconstruction, and expansion, business incubators, industrial parks, economic development organizations, and value-added manufacturing — allowing recapture of incentives that do not meet requirements of, Ch. 597

Tax deed, revising notice requirements in quiet title action, Ch. 375

TAXATION, SALES

Resort tax, resort area district board election laws — revision, Ch. 393

TEACHERS' RETIREMENT SYSTEM

Revision of provisions generally and providing option for purchase of service from University System Optional Retirement Program, Ch. 320

TECHNOLOGY, COLLEGES OF

Appropriations, Ch. 499, Ch. 560

Student construction projects, limiting liability resulting from, Ch. 521

TECHNOLOGY DISTRICTS

Creation, Ch. 566

TELEMARKETING AND TELEMARKETERS

Administrative and enforcement functions transferred to Department of Justice, Ch. 280

TELEVISION

Big Sky on the Big Screen Act, Ch. 593

TITLE LOANS, PERSONAL PROPERTY

Consumer to have right of rescission and allowing arbitration clauses in loan agreements, Ch. 210

License provisions revised, Ch. 120

TOBACCO PRODUCTS, See CIGARETTES OR TOBACCO PRODUCTS

TORTS

Action subject to Federal Employers' Liability Act and railroad as defendant, revising place of trial, Ch. 217

Structured settlement payment rights, transfer — provisions for regulation, Ch. 351

TRADE REGULATION AND COMPETITION

Gift certificates — expiration dates prohibited, associating ownership with possessor, limiting fees, and allowing limited cash redemption, Ch. 291

International trade agreements, affirming legislature's desire to be consulted on provisions of and requesting congressional delegation to promote protections for and best interests of state in negotiation of agreements, SJR 23

Licensing fees — payment by credit card, debit card, or other commercially acceptable means allowed, Ch. 47

Unfair trade practices and consumer protection laws, transferring administrative and enforcement functions to department of justice, Ch. 280

TRANSPORTATION

Rural transportation providers, exemption from public service commission authority, Ch. 82

TRANSPORTATION COMMISSION

Appointments to, SR 16

Urban highway system, contracts with local governments to use federal urban fund apportionment to secure payment of bonds issued for construction and construction engineering phases of projects, Ch. 336

TRANSPORTATION, DEPARTMENT OF

Appropriations, Ch. 496, Ch. 560, Ch. 607

Biodiesel fuel, reports on amount of tax refunds claimed, Ch. 525

Director, appointment, SR 13

Equipment storage buildings, general obligation bond proceeds to fund construction, Ch. 330

Highways, responsibilities, See generally HIGHWAYS

Local rail freight assistance programs, appropriation of federal funds received for, Ch. 496

Montana Essential Freight Rail Act revolving loan account, administration and loans from, Ch. 602

Motor carrier safety assistance program transferred to, Ch. 366

Motor fuel excise tax, local option — responsibility for collection and refund issuance transferred from, Ch. 539

Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS

Roundabouts instead of right-angle intersections, construction encouraged, HJR 12

TREASURE STATE ENDOWMENT PROGRAM

Regional water system special revenue account

appropriations and grants from, Ch. 580

costs of eligible projects, payment on interim basis allowed, Ch. 352

general obligation bond proceeds for specific regional water

authorities, debt service payments, Ch. 522

Revision of laws governing, grants and appropriations from, and termination of certain grants, Ch. 580

TRESPASS

Harvest heritage, preservation — right to trespass on private property not created, Constitutional Amendment No.41(Appendix)

TRUST INDENTURES

Forced reconveyance, provisions for, Ch. 413

TRUSTS

Principal and income, allocation from liquidating assets — percentage changed, Ch. 513

2-1-1 TELEPHONE NUMBER, STATEWIDE

Provisions for, Ch. 548

- U -

UNDERGROUND STORAGE TANKS

Licensing, administrative penalties provided and venue provisions for enforcement actions amended, Ch. 443

UNDERGROUND STORAGE TANKS (Continued)

- Permit issuance or renewal, eliminating requirement for prior determination of compliance or issuance of compliance order, Ch. 20
- Petroleum tank regulations, revision, Ch. 356

UNEMPLOYMENT INSURANCE

- Administration of tax transferred, Ch. 67
- Independent contractor certification requirements revised, Ch. 448
- Military leave provisions related to disqualification for benefits, updating, Ch. 381
- Revision of provisions generally, Ch. 466
- Sexual assault or stalking victims, benefits for, Ch. 187
- Weekly benefit, minimum — increase, Ch. 92

UNIFORM COMMERCIAL CODE, GENERAL PROVISIONS

- Revision of Chapter 1 to reflect scope of chapter, applicability of supplemental principles of law, concept of good faith, choice of law, relevance of course of performance between parties, and existence of independent statute of frauds, Ch. 575

UNIVERSITY OF MONTANA

- Capital project appropriations, removing authority for construction of life sciences building, removing reversion requirements and certain restrictions related to journalism building, and removing restrictions relating to law building, Ch. 560

UNIVERSITY SYSTEM

- Alternative energy systems loan laws, revision, Ch. 110
- Appropriations, Ch. 6, Ch. 499, Ch. 560, Ch. 607
- Athletic coaches, multiyear contracts authorized, Ch. 139
- False claim against governmental entity, providing for civil action against person making, Ch. 465
- Governor's postsecondary scholarship program, Ch. 489
- National guard, qualified members — waiver of tuition, Ch. 577
- Student construction projects, limiting liability resulting from, Ch. 521
- Student intern, definition in context of state employment, Ch. 75

UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM

- Teachers' Retirement System, providing option for purchase of service, Ch. 320

URBAN RENEWAL

- Tax increment financing provisions, revision, Ch. 545

UTILITIES

- Distributed energy generation, requesting interim study to investigate potential benefits of and obstacles to expanding, SJR 36
- Electric utility industry restructuring and customer choice, universal system benefits program charge rates — extending through 12/31/09, Ch. 256
- Montana Renewable Power Production and Rural Economic Development Act, waiver process, Ch. 457
- Natural gas pipeline safety provisions and regulations, penalties increased for violations, Ch. 124
- Natural gas utility restructuring and customer choice, tax revenue analysis provision eliminated, Ch. 107

UTILITIES (Continued)

- Regulated energy utilities, clarifying public service commission's existing authority to review and approve material affiliate transactions, Ch. 220
- Underground facilities, excavations near — providing damage fees and maintenance of damage incident histories, Ch. 544

- V -

VETERANS

- Hunting licenses for disabled combat veterans, providing half-priced deer and antelope licenses to certain veterans, Ch. 556
- License plates, two sets for use on two vehicles — exemption from cemetery and registration fees, Ch. 116
- State veterans' cemeteries, revising funding for and providing for cemeteries in missoula county and yellowstone county, Ch. 600
- Veterans' homes, tobacco tax dedicated to operation and maintenance — clarification that revenue is restricted to that use, Ch. 481

VETERANS' AFFAIRS, BOARD OF

- Appointments to, SR 8
- Appropriation, Ch. 600

VETERINARY MEDICINE AND VETERINARIANS

- Out-of-state veterinarians practicing in Montana, licensing exemption revised, Ch. 126

VETERINARY MEDICINE, BOARD OF

- Appointments to, SR 5

VITAL STATISTICS

- Conflicts in records, elimination, Ch. 149

VOLUNTEER FIREFIGHTERS' COMPENSATION

- Administrative provisions revised, Ch. 329
- Fire districts to have certain insurance ratings for service credit provisions, requirement eliminated, Ch. 329
- Pension benefits revised, Ch. 391
- Retired firefighters allowed to return to work while continuing to receive pension benefits, when, Ch. 332
- Service credit eligibility requirements, updating, Ch. 212

- W -

WASTE DISPOSAL

- Septic cleaning and disposal licenses, increasing application and renewal fees and revising allocation of fee revenue, Ch. 18

WATER AND WASTEWATER AUTHORITIES, REGIONAL

- Projects, appropriation for, Ch. 580

WATER COURT

- Issue remarks, resolution before issuance of final decree — provisions relating to, Ch. 526
- Water adjudication fees, reporting requirements, Ch. 288

WATER SUPPLY, PUBLIC

- Drinking water state revolving fund program, authorizing forgiveness of certain loans to disadvantaged communities, Ch. 323
- Municipal water right, nonabandonment — criterion for determination to include water supply that is to be used as approved by department of natural resources and conservation, Ch. 17

WATER USE

- Adjudication of rights
 - fee for adjudication, provisions for, Ch. 288
 - issue remarks, resolution before issuance of final decree — provisions relating to, Ch. 526
- Appropriation right
 - revisions generally, Ch. 70
 - temporary change provisions revised, Ch. 85
- Clark Fork River Basin Task Force, provisions made permanent and providing direction on future responsibilities, Ch. 434
- Fishery resources, instream flows to benefit — provisions revised, Ch. 70, Ch. 85
- Ground water, controlled ground water areas — designation and operation provisions revised, Ch. 161
- Highway, road, or right-of-way that provides existing legal access to public land or public waters including access for public recreational use — abandonment clarified, Ch. 168
- Hungry Horse Dam, urging department of natural resources and conservation to enter negotiations to determine availability and cost of water stored behind dam for possible contract to support future water development and existing water use in clark fork river basin, HJR 3
- Municipal water right, nonabandonment — requirement for qualification of consideration revised and criterion for determination changed, Ch. 17
- Revision of provisions generally, Ch. 70
- Upper Clark Fork River basin, specific statutory guidance removed and included in existing statutes, Ch. 85
- Water right enforcement, injunctive relief available and person trying to enforce must be awarded reasonable costs and attorney fees, Ch. 100
- Water right transfer certificate provisions revised, Ch. 70
- Water users' association or ditch company, loans from renewable resource grant and loan program — limit increased, Ch. 418

WEAPONS

- Out-of-state purchase of rifles and shotguns by residents of and nonresidents in Montana, abolishing unnecessary limits on, Ch. 45

WEEDS AND WEED CONTROL, See NOXIOUS WEEDS AND NOXIOUS WEED CONTROL**WEIGHTS, MEASURES, AND COMMODITY GRADES**

- Farm scales and other devices for weighing, revision of provisions generally, Ch. 34

WORKERS' COMPENSATION

- Catastrophically Injured Worker's Travel Assistance Act, Ch. 345
- Claims examiners, distinguishing from claims adjusters under insurance laws and providing definition for, Ch. 140

WORKERS' COMPENSATION (Continued)

Impairment medical evaluation procedures, clarification of application to impairment rating disputes, Ch. 141

Independent contractor certification requirements revised, Ch. 448

Insurers, benefit payments — allowing withholding of court-ordered restitution when injured worker convicted of theft of benefits, Ch. 31

Mediation conferences, attendance provisions revised, Ch. 39

Occupational disease provisions merged into, Ch. 416

Revision of provisions generally, Ch. 69

Simplification and clarification of provisions, Ch. 26, Ch. 103

State fund

board of directors, appointments to, SR 19

independent contractor or other employment exemptions, repealing requirement for departmental report, Ch. 122, Ch. 448

legislative liaisons, provisions for, Ch. 283

Subsequent injury fund, eliminating requirement that employer hiring or retaining certified person with disability file information with department and providing conditions for eligibility, Ch. 257

Terminology and procedures, simplification and clarification, Ch. 103

WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL

Elimination, Ch. 69

WRESTLING, See **BOXING AND WRESTLING**

- Y -**YOUTH CORRECTIONAL FACILITIES**

Asthma medications, policies related to access and use, Ch. 306

YOUTH COURT

Records, revision of laws pertaining to confidentiality and information sharing, Ch. 423

Removal of youth from home — purpose of youth court act to provide maintenance of ethnic, cultural, or religious heritage, Ch. 512

Youth intervention and prevention account, establishment and use, Ch. 482

- Z -**ZONING**

Airport affected areas, regulations to be part of zoning ordinances, Ch. 300

Sand and gravel operations and operations that mix concrete or batch asphalt, local regulations — clarifying applicability, Ch. 340

Street maintenance districts, assessment of costs — allowing zoning classification as method for, Ch. 567

Subdivision review, divisions of land exempt from are subject to zoning regulations, Ch. 252

TABLES

Code Sections Affected

Session Laws Affected

Senate Bill to Chapter Number

House Bill to Chapter Number

Chapter Number to Bill Number

Effective Dates By Chapter Number

Effective Dates by Date

Session Law to Code

2004 Ballot Issues

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

<u>Title-Chapter-Section</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
1-1-516	amended	Ch. 130	SB 24
1-1-520	enacted	Ch. 372	SB 2
1-1-526	enacted	Ch. 274	HB 244
1-5-416	amended	Ch. 123	SB 141
1-11-204	amended	Ch. 108	SB 36
1-11-301	amended	Ch. 73	HB 184
2-2-106	amended	Ch. 130	SB 24
2-2-121	amended	Ch. 145	SB 16
	amended	Ch. 173	HB 306
	amended	Ch. 437	HB 302
2-2-131	amended	Ch. 65	HB 155
2-2-302	amended	Ch. 138	SB 170
	amended	Ch. 316	HB 70
2-3-203	amended	Ch. 218	SB 470
2-4-303	amended	Ch. 265	SB 478
2-4-306	amended	Ch. 370	SB 384
2-4-405	amended	Ch. 265	SB 478
2-4-603	amended	Ch. 347	SB 62
2-4-614	amended	Ch. 347	SB 62
2-4-623	amended	Ch. 347	SB 62
	amended	Ch. 571	SB 260
2-4-702	amended	Ch. 347	SB 62
2-6-112	enacted	Ch. 390	SB 196
2-8-301	amended	Ch. 285	SB 299
2-8-302	amended	Ch. 285	SB 299
2-8-303	amended	Ch. 285	SB 299
2-9-211	amended	Ch. 191	HB 631
2-9-501	amended	Ch. 209	SB 162
2-9-701	amended	Ch. 209	SB 162
2-9-703	amended	Ch. 209	SB 162
2-9-711	repealed	Ch. 209	SB 162
2-9-803	amended	Ch. 209	SB 162
2-9-804	amended	Ch. 209	SB 162
2-15-150	amended	Ch. 223	HB 301
2-15-151	amended	Ch. 223	HB 301
2-15-225	amended	Ch. 346	SB 33
2-15-242	enacted	Ch. 115	SB 69
2-15-246	enacted and amended	Ch. 605	HB 769
2-15-401	amended	Ch. 207	SB 136
	amended	Ch. 370	SB 384
2-15-1007	amended	Ch. 105	SB 17
2-15-1019	amended	Ch. 283	SB 61
2-15-1020	repealed 7/1/2006	Ch. 449	SB 146
2-15-1028	enacted	Ch. 449	SB 146
2-15-1524	enacted	Ch. 489	HB 435
2-15-1709	repealed	Ch. 69	HB 161
2-15-1731	amended	Ch. 126	HB 203
	amended	Ch. 519	HB 737
2-15-1734	amended	Ch. 126	HB 203
2-15-1745	enacted	Ch. 294	HB 628
2-15-1751	amended	Ch. 126	HB 203

MONTANA SESSION LAWS 2005

3226

2-15-1756	amended	Ch. 126	HB 203
2-15-1772	amended	Ch. 126	HB 203
2-15-1781	amended	Ch. 36	HB 226
2-15-1821	amended	Ch. 130	SB 24
2-15-1822	amended	Ch. 130	SB 24
2-15-1869	amended	Ch. 78	HB 215
2-15-1870	amended	Ch. 78	HB 215
2-15-2014	amended	Ch. 504	HB 577
2-15-2015	amended	Ch. 416	SB 481
2-15-2025	enacted	Ch. 506	HB 615
2-15-2108	amended	Ch. 356	SB 145
2-15-3330	amended	Ch. 387	SB 138
2-16-107	enacted	Ch. 219	HB 150
2-16-112	amended	Ch. 381	SB 118
2-16-501	amended	Ch. 381	SB 118
2-17-526	amended	Ch. 106	SB 23
2-17-803	amended	Ch. 321	HB 109
2-17-804	amended	Ch. 25	HB 107
	amended	Ch. 321	HB 109
2-17-805	amended	Ch. 321	HB 109
2-17-807	amended	Ch. 25	HB 107
2-17-808	amended	Ch. 25	HB 107
	amended	Ch. 223	HB 301
2-17-809	repealed 12/31/2006	Ch. 223	HB 301
2-17-811	amended	Ch. 321	HB 109
2-17-812	amended	Ch. 321	HB 109
2-17-813	amended	Ch. 25	HB 107
2-17-817	amended	Ch. 321	HB 109
2-18-101	amended	Ch. 56	HB 112
	amended	Ch. 75	HB 198
2-18-103	amended	Ch. 449	SB 146
2-18-111	amended	Ch. 75	HB 198
2-18-120	enacted	Ch. 56	HB 112
2-18-301	amended	Ch. 6	HB 447
2-18-303	amended	Ch. 6	HB 447
	amended	Ch. 238	SB 206
	amended	Ch. 421	HB 35
2-18-304	amended	Ch. 6	HB 447
2-18-312	amended	Ch. 6	HB 447
2-18-313	repealed	Ch. 6	HB 447
2-18-315	repealed	Ch. 6	HB 447
2-18-503	amended	Ch. 112	SB 54
2-18-601	amended	Ch. 11	HB 29
	amended	Ch. 75	HB 198
	amended	Ch. 582	HB 45
2-18-604	amended	Ch. 582	HB 45
2-18-611	amended	Ch. 11	HB 29
	amended	Ch. 75	HB 198
2-18-701	amended	Ch. 75	HB 198
2-18-703	amended	Ch. 6	HB 447
2-18-809	amended	Ch. 75	HB 198
2-18-1101	amended	Ch. 75	HB 198
2-18-1202	amended	Ch. 75	HB 198
2-18-1204	amended	Ch. 111	SB 53
	amended	Ch. 130	SB 24
2-18-1303	amended	Ch. 75	HB 198
	amended	Ch. 96	HB 508
3-1-102	amended	Ch. 557	HB 367
3-1-317	amended	Ch. 445	HB 536
3-1-702	amended	Ch. 445	HB 536
3-2-303	amended	Ch. 328	HB 211
3-2-714	amended	Ch. 114	SB 67
	amended	Ch. 408	SB 406

3-5-102	amended	Ch. 373	SB 18
3-5-114	amended	Ch. 557	HB 367
3-5-511	amended	Ch. 449	SB 146
3-5-604	amended	Ch. 254	SB 355
	amended	Ch. 449	SB 146
3-5-901	amended	Ch. 449	SB 146
3-5-904	repealed	Ch. 445	HB 536
3-6-106	amended	Ch. 167	HB 262
3-6-201	amended	Ch. 167	HB 262
3-6-204	amended	Ch. 167	HB 262
	amended	Ch. 557	HB 367
3-10-101	amended	Ch. 557	HB 367
3-10-115	amended	Ch. 557	HB 367
3-10-116	amended	Ch. 557	HB 367
3-10-117	repealed	Ch. 557	HB 367
3-10-118	enacted	Ch. 557	HB 367
3-10-203	amended	Ch. 557	HB 367
3-10-207	amended	Ch. 557	HB 367
3-10-301	amended	Ch. 130	SB 24
3-10-601	amended	Ch. 232	SB 38
5-1-116	repealed	Ch. 357	SB 160
5-2-203	amended	Ch. 311	HB 30
5-5-211	amended	Ch. 527	HB 790
5-5-230	amended	Ch. 221	HB 199
5-7-112	amended	Ch. 130	SB 24
5-7-208	amended	Ch. 250	SB 347
5-11-407	enacted	Ch. 581	HB 28
5-13-203	amended	Ch. 285	SB 299
5-17-201	repealed	Ch. 16	SB 14
5-17-202	repealed	Ch. 16	SB 14
5-17-203	repealed	Ch. 16	SB 14
5-17-204	repealed	Ch. 16	SB 14
5-17-205	repealed	Ch. 16	SB 14
5-17-206	repealed	Ch. 16	SB 14
5-17-207	repealed	Ch. 16	SB 14
5-17-301	repealed	Ch. 25	HB 107
5-17-302	repealed	Ch. 25	HB 107
5-17-303	repealed	Ch. 25	HB 107
7-1-120	repealed	Ch. 268	HB 643
7-1-2103	amended	Ch. 453	SB 301
7-1-2105	enacted	Ch. 198	HB 743
7-1-2111	amended	Ch. 130	SB 24
7-1-2121	amended	Ch. 444	HB 474
7-1-4105	enacted	Ch. 198	HB 743
7-1-4123	amended	Ch. 453	SB 301
7-1-4150	amended	Ch. 398	SB 279
7-2-2422	amended	Ch. 130	SB 24
7-2-2424	amended	Ch. 130	SB 24
7-3-173	amended	Ch. 130	SB 24
7-3-1105	amended	Ch. 261	SB 410
7-3-1222	amended	Ch. 261	SB 410
7-3-1344	amended	Ch. 36	HB 226
7-4-2208	amended	Ch. 381	SB 118
7-4-2503	amended	Ch. 36	HB 226
	amended	Ch. 182	HB 507
7-4-2508	amended	Ch. 36	HB 226
7-4-2509	amended	Ch. 36	HB 226
7-4-2510	amended	Ch. 36	HB 226
7-4-2614	amended	Ch. 165	HB 234
7-4-2632	amended	Ch. 135	SB 98
7-4-2637	amended	Ch. 135	SB 98
7-4-3001	amended	Ch. 36	HB 226
7-4-4604	amended	Ch. 154	HB 103

MONTANA SESSION LAWS 2005

3228

7-5-2301	amended	Ch. 574	SB 342
7-5-2315	enacted	Ch. 162	HB 212
7-5-4302	amended	Ch. 192	HB 636
	amended	Ch. 574	SB 342
7-5-4310	amended	Ch. 192	HB 636
7-5-4315	enacted	Ch. 162	HB 212
7-6-206	amended	Ch. 240	SB 225
7-6-1541	amended	Ch. 393	SB 245
7-6-1544	amended	Ch. 393	SB 245
7-6-1546	amended	Ch. 393	SB 245
7-6-1601	enacted	Ch. 299	SB 185
7-6-1602	enacted	Ch. 299	SB 185
7-6-1603	enacted	Ch. 299	SB 185
7-6-1604	enacted	Ch. 299	SB 185
7-6-2225	amended	Ch. 598	HB 700
7-6-2226	amended	Ch. 598	HB 700
7-6-2230	enacted	Ch. 135	SB 98
7-6-2426	amended	Ch. 449	SB 146
7-6-2501	amended	Ch. 453	SB 301
7-6-2521	amended	Ch. 453	SB 301
7-6-2522	amended	Ch. 453	SB 301
7-6-2523	repealed	Ch. 453	SB 301
7-6-2524	amended	Ch. 453	SB 301
7-6-2526	repealed	Ch. 453	SB 301
7-6-2527	amended	Ch. 317	HB 73
	enacted	Ch. 453	SB 301
7-6-2601	amended	Ch. 432	HB 220
7-6-4005	amended	Ch. 209	SB 162
7-6-4023	repealed 7/1/2006	Ch. 449	SB 146
	repealed	Ch. 453	SB 301
7-6-4401	amended	Ch. 453	SB 301
7-6-4421	amended	Ch. 453	SB 301
7-6-4501	amended	Ch. 432	HB 220
7-7-104	amended	Ch. 451	SB 292
7-7-109	amended	Ch. 451	SB 292
7-7-110	enacted	Ch. 336	HB 451
7-7-2206	amended	Ch. 451	SB 292
7-7-2207	amended	Ch. 451	SB 292
7-7-2211	amended	Ch. 451	SB 292
7-7-2304	amended	Ch. 451	SB 292
7-7-4104	amended	Ch. 453	SB 301
7-7-4206	amended	Ch. 451	SB 292
7-7-4210	amended	Ch. 451	SB 292
7-7-4304	amended	Ch. 451	SB 292
7-7-4502	amended	Ch. 451	SB 292
7-12-2102	amended	Ch. 529	SB 40
7-12-2103	amended	Ch. 488	HB 431
7-12-2105	amended	Ch. 488	HB 431
	amended	Ch. 529	SB 40
7-12-2109	amended	Ch. 401	SB 294
	amended	Ch. 488	HB 431
	amended	Ch. 529	SB 40
7-12-2112	amended	Ch. 488	HB 431
7-12-2113	amended	Ch. 451	SB 292
	amended	Ch. 529	SB 40
7-12-2193	amended	Ch. 451	SB 292
7-12-2198	enacted	Ch. 162	HB 212
7-12-4110	amended	Ch. 401	SB 294
7-12-4114	amended	Ch. 401	SB 294
7-12-4194	amended	Ch. 451	SB 292
7-12-4195	enacted	Ch. 451	SB 292
7-12-4198	enacted	Ch. 162	HB 212
7-12-4401	amended	Ch. 231	SB 32

7-12-4422	amended	Ch. 567	SB 175
7-13-144	amended	Ch. 453	SB 301
7-13-2204	amended	Ch. 341	HB 666
7-13-2208	amended	Ch. 341	HB 666
7-13-2212	amended	Ch. 341	HB 666
7-13-2215	amended	Ch. 341	HB 666
7-13-2231	amended	Ch. 341	HB 666
7-13-2282	amended	Ch. 341	HB 666
7-13-2290	enacted	Ch. 341	HB 666
7-13-2302	amended	Ch. 341	HB 666
7-13-2321	amended	Ch. 341	HB 666
7-13-2328	amended	Ch. 341	HB 666
7-13-2329	amended	Ch. 341	HB 666
7-13-2333	enacted	Ch. 341	HB 666
7-13-2349	enacted	Ch. 341	HB 666
7-13-3027	amended	Ch. 453	SB 301
7-13-4309	amended	Ch. 451	SB 292
7-14-112	amended	Ch. 596	HB 671
7-14-301	amended	Ch. 539	SB 222
7-14-302	amended	Ch. 539	SB 222
7-14-303	amended	Ch. 539	SB 222
7-14-304	amended	Ch. 539	SB 222
7-14-2504	repealed	Ch. 453	SB 301
7-14-2615	amended	Ch. 168	HB 269
7-14-4109	amended	Ch. 451	SB 292
7-14-4801	amended	Ch. 300	SB 255
7-15-4282	amended	Ch. 566	SB 167
7-15-4283	amended	Ch. 566	SB 167
7-15-4284	amended	Ch. 566	SB 167
7-15-4285	amended	Ch. 566	SB 167
7-15-4286	amended	Ch. 566	SB 167
7-15-4288	amended	Ch. 566	SB 167
7-15-4290	amended	Ch. 566	SB 167
7-15-4292	amended	Ch. 545	SB 345
7-15-4293	amended	Ch. 566	SB 167
	amended	Ch. 545	SB 345
7-15-4294	enacted	Ch. 545	SB 345
7-15-4295	enacted	Ch. 566	SB 167
7-15-4301	amended	Ch. 566	SB 167
7-15-4304	amended	Ch. 566	SB 167
7-16-2324	amended	Ch. 333	HB 436
7-16-2401	amended	Ch. 175	HB 321
7-16-2423	amended	Ch. 175	HB 321
7-16-2433	amended	Ch. 175	HB 321
7-16-2443	amended	Ch. 451	SB 292
7-21-1001	enacted	Ch. 516	HB 720
7-21-1002	enacted	Ch. 516	HB 720
7-21-1003	enacted	Ch. 516	HB 720
7-21-3410	amended	Ch. 453	SB 301
7-22-2154	enacted	Ch. 395	SB 259
7-22-2403	amended	Ch. 555	HB 218
7-22-2404	repealed	Ch. 555	HB 218
7-22-2406	repealed	Ch. 555	HB 218
7-22-2407	repealed	Ch. 555	HB 218
7-22-2408	amended	Ch. 555	HB 218
7-22-2409	amended	Ch. 555	HB 218
7-22-2442	amended	Ch. 555	HB 218
7-31-4110	amended	Ch. 261	SB 410
7-32-2102	amended	Ch. 36	HB 226
7-32-2113	enacted	Ch. 271	HB 105
7-32-2114	enacted	Ch. 271	HB 105
7-32-2126	amended	Ch. 36	HB 226

MONTANA SESSION LAWS 2005

3230

7-32-2226	amended	Ch. 414	SB 472
7-32-4114	amended	Ch. 225	HB 483
7-32-4122	amended	Ch. 179	HB 427
7-32-4139	repealed	Ch. 198	HB 743
7-33-2205	amended	Ch. 492	HB 473
7-33-2206	amended	Ch. 492	HB 473
7-35-2121	amended	Ch. 130	SB 24
10-1-104	amended	Ch. 61	HB 139
10-1-105	amended	Ch. 61	HB 139
10-1-121	repealed	Ch. 577	SB 445
10-1-205	amended	Ch. 28	HB 128
10-1-603	repealed	Ch. 381	SB 118
10-1-604	amended and renumbered 10-1-1009	Ch. 381	SB 118
10-1-606	amended	Ch. 587	HB 227
10-1-615	amended	Ch. 381	SB 118
10-1-902	amended	Ch. 534	SB 81
10-1-1001	enacted	Ch. 381	SB 118
10-1-1002	enacted	Ch. 381	SB 118
10-1-1003	enacted	Ch. 381	SB 118
10-1-1004	enacted	Ch. 381	SB 118
10-1-1005	enacted	Ch. 381	SB 118
10-1-1006	enacted	Ch. 381	SB 118
10-1-1007	enacted	Ch. 381	SB 118
10-1-1008	enacted	Ch. 381	SB 118
10-1-1009	formerly 10-1-604	Ch. 381	SB 118
10-1-1010	enacted	Ch. 381	SB 118
10-1-1015	enacted	Ch. 381	SB 118
10-1-1016	enacted	Ch. 381	SB 118
10-1-1017	enacted	Ch. 381	SB 118
10-1-1018	enacted	Ch. 381	SB 118
10-1-1019	enacted	Ch. 381	SB 118
10-1-1020	enacted	Ch. 381	SB 118
10-1-1021	enacted	Ch. 381	SB 118
10-1-1022	enacted	Ch. 381	SB 118
10-1-1027	enacted	Ch. 381	SB 118
10-1-1101	enacted	Ch. 604	HB 761
10-1-1102	enacted	Ch. 604	HB 761
10-1-1103	enacted	Ch. 604	HB 761
10-1-1104	enacted	Ch. 604	HB 761
10-2-112	amended	Ch. 542	SB 285
10-2-211	repealed	Ch. 381	SB 118
10-2-212	repealed	Ch. 381	SB 118
10-2-213	repealed	Ch. 381	SB 118
10-2-214	repealed	Ch. 381	SB 118
10-2-221	repealed	Ch. 381	SB 118
10-2-222	repealed	Ch. 381	SB 118
10-2-223	repealed	Ch. 381	SB 118
10-2-224	repealed	Ch. 381	SB 118
10-2-225	repealed	Ch. 381	SB 118
10-2-226	repealed	Ch. 381	SB 118
10-2-227	repealed	Ch. 381	SB 118
10-2-228	repealed	Ch. 381	SB 118
10-2-417	amended	Ch. 481	HB 411
10-2-601	amended	Ch. 600	HB 728
10-2-603	amended	Ch. 600	HB 728
10-3-801	amended	Ch. 542	SB 285
10-3-901	enacted	Ch. 354	SB 140
10-3-902	enacted	Ch. 354	SB 140
10-3-903	enacted	Ch. 354	SB 140
10-3-904	enacted	Ch. 354	SB 140
10-3-905	enacted	Ch. 354	SB 140
10-3-906	enacted	Ch. 354	SB 140
10-3-907	enacted	Ch. 354	SB 140

10-3-908	enacted	Ch. 354	SB 140
10-3-909	enacted	Ch. 354	SB 140
10-3-910	enacted	Ch. 354	SB 140
10-3-911	enacted	Ch. 354	SB 140
10-3-912	enacted	Ch. 354	SB 140
10-3-1204	amended	Ch. 354	SB 140
10-3-1307	amended	Ch. 596	HB 671
10-4-102	amended	Ch. 36	HB 226
13-1-116	enacted	Ch. 367	SB 500
13-1-303	amended	Ch. 586	HB 177
13-2-108	amended	Ch. 286	SB 302
13-2-110	amended	Ch. 286	SB 302
13-2-115	amended	Ch. 286	SB 302
13-2-222	amended	Ch. 446	HB 590
13-2-301	amended	Ch. 286	SB 302
	amended	Ch. 586	HB 177
13-2-302	repealed	Ch. 286	SB 302
13-2-304	enacted	Ch. 286	SB 302
13-2-402	amended	Ch. 586	HB 177
13-2-512	amended	Ch. 446	HB 590
13-2-514	amended	Ch. 286	SB 302
	amended	Ch. 586	HB 177
13-3-205	amended	Ch. 367	SB 500
13-10-201	amended	Ch. 586	HB 177
13-10-204	amended	Ch. 586	HB 177
13-10-209	amended	Ch. 586	HB 177
13-10-211	amended	Ch. 586	HB 177
13-10-302	amended	Ch. 586	HB 177
13-13-114	amended	Ch. 367	SB 500
13-13-119	amended	Ch. 367	SB 500
13-13-201	amended	Ch. 286	SB 302
13-13-204	amended	Ch. 359	SB 182
13-13-205	amended	Ch. 286	SB 302
13-13-211	amended	Ch. 130	SB 24
13-13-212	amended	Ch. 284	SB 88
	amended	Ch. 286	SB 302
	amended	Ch. 586	HB 177
13-13-213	amended	Ch. 286	SB 302
	amended	Ch. 367	SB 500
13-13-214	amended	Ch. 284	SB 88
	amended	Ch. 367	SB 500
13-13-232	amended	Ch. 286	SB 302
13-13-233	amended	Ch. 286	SB 302
13-13-241	amended	Ch. 286	SB 302
13-13-243	amended and renumbered 13-15-108	Ch. 286	SB 302
	amended	Ch. 359	SB 182
13-13-301	amended	Ch. 586	HB 177
13-14-112	amended	Ch. 586	HB 177
13-14-113	amended	Ch. 586	HB 177
13-15-107	amended	Ch. 286	SB 302
	amended	Ch. 586	HB 177
13-15-108	formerly 13-13-243	Ch. 286	SB 302
13-15-111	amended	Ch. 586	HB 177
13-15-201	amended	Ch. 286	SB 302
13-15-203	repealed	Ch. 286	SB 302
13-15-206	amended	Ch. 586	HB 177
13-15-209	enacted	Ch. 586	HB 177
13-16-412	amended	Ch. 586	HB 177
13-16-414	amended	Ch. 586	HB 177
13-17-103	amended	Ch. 275	HB 297
	amended	Ch. 286	SB 302
13-17-211	amended	Ch. 586	HB 177
13-17-212	amended	Ch. 286	SB 302

MONTANA SESSION LAWS 2005

3232

13-19-104	amended	Ch. 264	SB 460
13-21-206	amended	Ch. 586	HB 177
13-27-111	amended	Ch. 479	HB 386
13-27-410	amended	Ch. 586	HB 177
13-35-226	amended	Ch. 437	HB 302
13-37-101	amended	Ch. 479	HB 386
13-37-102	amended	Ch. 479	HB 386
13-37-103	amended	Ch. 479	HB 386
13-37-107	enacted	Ch. 479	HB 386
13-37-108	enacted	Ch. 479	HB 386
13-37-111	amended	Ch. 479	HB 386
15-1-101	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-1-116	amended	Ch. 450	SB 261
	amended (Void. Sec. 130, Ch. 596)	Ch. 596	HB 671
15-1-117	repealed	Ch. 450	SB 261
	amended	Ch. 596	HB 671
15-1-118	enacted	Ch. 450	SB 261
15-1-121	amended	Ch. 114	SB 67
	amended	Ch. 130	SB 24
	amended	Ch. 163	HB 223
	amended	Ch. 449	SB 146
	amended	Ch. 596	HB 671
15-1-122	amended	Ch. 130	SB 24
	amended	Ch. 325	HB 170
	amended	Ch. 464	HB 102
	amended (Void. Sec. 8, Ch. 500)	Ch. 500	HB 541
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-1-141	repealed	Ch. 550	SB 442
15-1-206	amended	Ch. 594	HB 592
15-1-216	amended	Ch. 288	HB 22
	amended	Ch. 594	HB 592
15-1-230	amended	Ch. 4	HB 193
15-1-231	amended	Ch. 47	HB 54
15-1-402	amended	Ch. 536	SB 87
15-1-501	amended	Ch. 163	HB 223
	amended	Ch. 428	HB 192
	amended	Ch. 550	SB 442
15-1-504	amended	Ch. 542	SB 285
15-2-302	amended	Ch. 67	HB 158
15-6-131	amended	Ch. 559	SB 276
15-6-133	amended	Ch. 376	SB 74
15-6-134	amended	Ch. 532	SB 68
	amended	Ch. 584	HB 115
15-6-137	amended	Ch. 563	SB 115
15-6-138	amended	Ch. 3	HB 84
	amended	Ch. 531	SB 48
	amended	Ch. 532	SB 68
	amended	Ch. 542	SB 285
	amended	Ch. 584	HB 115
15-6-141	amended	Ch. 563	SB 115
15-6-156	amended	Ch. 563	SB 115
15-6-157	enacted	Ch. 563	SB 115
15-6-201	amended	Ch. 2	HB 38
	amended	Ch. 531	SB 48
	amended	Ch. 532	SB 68
	amended	Ch. 542	SB 285
	amended	Ch. 563	SB 115
	amended	Ch. 584	HB 115
15-6-204	amended	Ch. 532	SB 68
15-6-205	amended	Ch. 532	SB 68
15-6-207	amended	Ch. 532	SB 68

15-6-208	amended	Ch. 559	SB 276
15-6-215	amended	Ch. 542	SB 285
15-6-218	amended	Ch. 318	HB 85
15-6-219	enacted and amended	Ch. 532	SB 68
15-6-220	amended	Ch. 532	SB 68
15-6-222	enacted	Ch. 532	SB 68
15-6-223	enacted	Ch. 532	SB 68
15-6-224	enacted	Ch. 532	SB 68
15-6-228	enacted	Ch. 532	SB 68
	amended	Ch. 542	SB 285
15-7-102	amended	Ch. 532	SB 68
	amended	Ch. 584	HB 115
15-7-104	repealed	Ch. 130	SB 24
15-7-111	amended	Ch. 554	SB 524
15-7-202	amended	Ch. 376	SB 74
	amended	Ch. 543	SB 296
15-7-305	amended	Ch. 70	HB 178
15-7-308	amended	Ch. 70	HB 178
15-8-111	amended	Ch. 379	SB 92
	amended	Ch. 532	SB 68
	amended	Ch. 584	HB 115
15-8-201	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-8-202	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-8-511	amended	Ch. 379	SB 92
15-8-512	amended	Ch. 379	SB 92
15-10-420	amended	Ch. 376	SB 74
	amended	Ch. 545	SB 345
15-15-103	amended	Ch. 533	SB 75
15-15-104	amended	Ch. 533	SB 75
15-15-201	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-16-101	amended	Ch. 453	SB 301
15-16-102	amended	Ch. 587	HB 227
15-16-115	repealed	Ch. 189	HB 607
15-16-117	repealed	Ch. 189	HB 607
	amended	Ch. 453	SB 301
15-16-202	repealed 1/1/2006	Ch. 542	SB 285
	repealed 1/1/2006	Ch. 596	HB 671
15-16-301	amended	Ch. 189	HB 607
15-16-403	amended	Ch. 392	SB 231
15-18-411	amended	Ch. 375	SB 70
15-23-101	amended	Ch. 559	SB 276
15-23-116	amended	Ch. 536	SB 87
15-23-214	amended	Ch. 594	HB 592
15-23-501	amended	Ch. 559	SB 276
15-23-502	amended	Ch. 559	SB 276
15-24-202	amended	Ch. 587	HB 227
15-24-210	amended	Ch. 189	HB 607
15-24-301	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
15-24-302	amended	Ch. 189	HB 607
	amended	Ch. 596	HB 671
15-24-925	amended	Ch. 12	HB 37
15-24-1402	amended	Ch. 597	HB 689
15-24-1501	amended	Ch. 597	HB 689
15-24-1502	amended	Ch. 597	HB 689
15-24-1802	amended	Ch. 597	HB 689
15-24-1902	amended	Ch. 597	HB 689
15-24-2002	amended	Ch. 597	HB 689
15-24-2404	amended	Ch. 597	HB 689
15-24-3004	enacted	Ch. 563	SB 115

MONTANA SESSION LAWS 2005

3234

15-24-3005	amended	Ch. 130	SB 24
	amended	Ch. 563	SB 115
15-24-3006	amended	Ch. 563	SB 115
15-24-3007	amended	Ch. 563	SB 115
15-30-111	amended	Ch. 130	SB 24
	amended	Ch. 595	HB 667
15-30-116	amended	Ch. 604	HB 761
15-30-121	amended	Ch. 542	SB 285
15-30-124	amended	Ch. 95	HB 439
15-30-142	amended	Ch. 594	HB 592
15-30-149	amended	Ch. 594	HB 592
15-30-166	amended	Ch. 4	HB 193
15-30-169	enacted	Ch. 535	SB 85
15-30-184	enacted	Ch. 537	SB 133
15-30-185	enacted	Ch. 595	HB 667
15-30-192	repealed	Ch. 163	HB 223
15-30-201	amended	Ch. 67	HB 158
15-30-202	amended	Ch. 67	HB 158
15-30-203	amended	Ch. 67	HB 158
15-30-204	amended	Ch. 67	HB 158
15-30-209	amended	Ch. 67	HB 158
	amended (Void. Sec. 41, Ch. 594)	Ch. 594	HB 592
15-30-210	amended	Ch. 67	HB 158
15-30-241	amended	Ch. 594	HB 592
15-30-248	amended	Ch. 67	HB 158
15-30-249	repealed	Ch. 67	HB 158
15-30-250	repealed	Ch. 67	HB 158
15-30-251	repealed	Ch. 67	HB 158
15-30-256	repealed	Ch. 67	HB 158
15-30-257	repealed	Ch. 67	HB 158
15-30-303	amended	Ch. 595	HB 667
15-30-313	amended	Ch. 30	HB 171
15-30-321	amended	Ch. 594	HB 592
15-30-323	amended	Ch. 594	HB 592
15-30-1112	amended	Ch. 594	HB 592
15-30-1114	amended	Ch. 318	HB 85
15-31-101	amended	Ch. 163	HB 223
15-31-102	amended	Ch. 163	HB 223
15-31-111	amended	Ch. 594	HB 592
15-31-115	amended	Ch. 130	SB 24
15-31-130	enacted	Ch. 595	HB 667
15-31-141	amended	Ch. 594	HB 592
15-31-152	enacted	Ch. 537	SB 133
15-31-161	amended	Ch. 4	HB 193
15-31-162	amended	Ch. 4	HB 193
15-31-503	amended	Ch. 594	HB 592
15-31-510	amended	Ch. 594	HB 592
15-31-511	amended	Ch. 595	HB 667
15-31-531	amended	Ch. 594	HB 592
15-31-543	amended	Ch. 594	HB 592
15-31-545	repealed	Ch. 594	HB 592
15-31-603	amended	Ch. 273	HB 167
15-31-801	repealed	Ch. 163	HB 223
15-31-802	repealed	Ch. 163	HB 223
15-31-803	repealed	Ch. 163	HB 223
15-31-804	repealed	Ch. 163	HB 223
15-31-805	repealed	Ch. 163	HB 223
15-31-806	repealed	Ch. 163	HB 223
15-31-807	repealed	Ch. 163	HB 223
15-31-808	repealed	Ch. 163	HB 223
15-31-901	enacted	Ch. 593	HB 584
15-31-902	enacted	Ch. 593	HB 584
15-31-903	enacted	Ch. 593	HB 584

15-31-904	enacted	Ch. 593	HB 584
15-31-905	enacted	Ch. 593	HB 584
15-31-906	enacted	Ch. 593	HB 584
15-31-907	enacted	Ch. 593	HB 584
15-31-908	enacted	Ch. 593	HB 584
15-31-909	enacted	Ch. 593	HB 584
15-31-910	enacted	Ch. 593	HB 584
15-31-911	enacted	Ch. 593	HB 584
15-32-108	repealed	Ch. 130	SB 24
15-32-115	amended	Ch. 455	SB 340
15-32-405	amended	Ch. 532	SB 68
	amended	Ch. 584	HB 115
15-32-701	enacted	Ch. 524	HB 756
15-32-702	enacted	Ch. 524	HB 756
15-32-703	enacted	Ch. 525	HB 776
15-35-103	amended	Ch. 415	SB 480
15-35-108	amended	Ch. 589	HB 482
	amended	Ch. 603	HB 758
15-35-112	amended	Ch. 594	HB 592
15-36-303	amended	Ch. 592	HB 535
15-36-304	amended	Ch. 592	HB 535
	amended	Ch. 603	HB 758
15-36-311	amended	Ch. 5	HB 194
15-36-314	amended	Ch. 594	HB 592
15-36-331	amended	Ch. 5	HB 194
	amended	Ch. 527	HB 790
	amended	Ch. 603	HB 758
15-36-332	amended	Ch. 603	HB 758
15-37-102	amended	Ch. 594	HB 592
15-37-105	amended	Ch. 594	HB 592
15-37-106	amended	Ch. 594	HB 592
15-37-108	amended	Ch. 594	HB 592
15-37-114	amended	Ch. 594	HB 592
15-37-117	amended	Ch. 598	HB 700
15-37-210	amended	Ch. 594	HB 592
15-38-106	amended	Ch. 594	HB 592
15-38-110	amended	Ch. 594	HB 592
15-38-111	amended	Ch. 594	HB 592
15-39-101	enacted	Ch. 559	SB 276
15-39-102	enacted	Ch. 559	SB 276
15-39-103	enacted	Ch. 559	SB 276
15-39-104	enacted	Ch. 559	SB 276
15-39-105	enacted	Ch. 559	SB 276
15-39-106	enacted	Ch. 559	SB 276
15-39-107	enacted	Ch. 559	SB 276
15-39-108	enacted	Ch. 559	SB 276
15-39-109	enacted	Ch. 559	SB 276
15-39-110	enacted	Ch. 559	SB 276
15-39-111	enacted	Ch. 559	SB 276
15-50-207	amended	Ch. 454	SB 323
	amended	Ch. 542	SB 285
15-50-308	amended	Ch. 594	HB 592
15-51-109	amended	Ch. 594	HB 592
15-53-145	amended	Ch. 594	HB 592
15-53-146	amended	Ch. 594	HB 592
15-59-112	amended	Ch. 594	HB 592
15-60-102	amended	Ch. 523	HB 749
15-60-206	amended	Ch. 594	HB 592
15-61-102	amended	Ch. 130	SB 24
15-62-103	amended	Ch. 549	SB 432
15-62-201	amended	Ch. 549	SB 432
15-62-203	amended	Ch. 549	SB 432
15-62-301	enacted	Ch. 549	SB 432

15-62-302	enacted	Ch. 549	SB 432
15-65-115	amended	Ch. 594	HB 592
15-65-121	amended	Ch. 130	SB 24
15-66-101	amended	Ch. 606	SB 120
15-66-102	amended	Ch. 606	SB 120
15-66-201	amended	Ch. 606	SB 120
15-66-206	amended	Ch. 594	HB 592
15-67-101	amended	Ch. 377	SB 82
15-67-102	amended	Ch. 377	SB 82
15-67-206	amended	Ch. 594	HB 592
15-68-101	amended	Ch. 542	SB 285
15-68-513	amended	Ch. 594	HB 592
15-70-201	amended	Ch. 452	SB 293
15-70-204	amended	Ch. 452	SB 293
15-70-233	amended	Ch. 366	SB 459
15-70-245	repealed	Ch. 452	SB 293
15-70-301	amended	Ch. 130	SB 24
	amended	Ch. 525	HB 776
15-70-302	amended	Ch. 384	SB 123
15-70-304	amended	Ch. 525	HB 776
15-70-311	amended	Ch. 397	SB 277
15-70-312	amended	Ch. 397	SB 277
15-70-321	amended	Ch. 384	SB 123
15-70-323	amended	Ch. 384	SB 123
15-70-325	amended	Ch. 384	SB 123
15-70-330	amended	Ch. 384	SB 123
15-70-341	amended	Ch. 525	HB 776
15-70-356	amended	Ch. 384	SB 123
15-70-357	amended	Ch. 366	SB 459
15-70-369	enacted	Ch. 525	HB 776
15-70-370	repealed	Ch. 525	HB 776
15-70-372	amended	Ch. 384	SB 123
15-70-503	amended	Ch. 452	SB 293
15-70-522	amended	Ch. 452	SB 293
15-70-601	enacted	Ch. 524	HB 756
15-72-114	amended	Ch. 594	HB 592
16-1-101	amended	Ch. 130	SB 24
16-1-404	amended	Ch. 591	HB 517
16-1-424	enacted	Ch. 591	HB 517
16-3-241	amended	Ch. 247	SB 325
16-3-321	enacted	Ch. 441	HB 348
16-3-322	enacted	Ch. 441	HB 348
16-3-323	enacted	Ch. 441	HB 348
16-3-324	enacted	Ch. 441	HB 348
16-4-103	amended	Ch. 143	SB 243
16-4-105	amended	Ch. 267	SB 497
16-4-201	amended	Ch. 267	SB 497
16-4-304	amended	Ch. 293	HB 528
16-4-310	enacted	Ch. 591	HB 517
16-4-311	enacted	Ch. 591	HB 517
16-4-312	enacted	Ch. 591	HB 517
16-4-401	amended	Ch. 591	HB 517
16-4-414	amended	Ch. 495	HB 502
16-4-501	amended	Ch. 293	HB 528
	amended	Ch. 591	HB 517
16-10-306	amended	Ch. 511	HB 687
16-11-102	amended	Ch. 511	HB 687
16-11-103	amended	Ch. 511	HB 687
16-11-104	amended	Ch. 511	HB 687
16-11-106	enacted	Ch. 511	HB 687
16-11-107	enacted	Ch. 511	HB 687
16-11-108	enacted	Ch. 511	HB 687
16-11-111	amended	Ch. 511	HB 687

16-11-114	amended	Ch. 511	HB 687
16-11-118	amended	Ch. 511	HB 687
16-11-119	amended	Ch. 511	HB 687
16-11-120	amended	Ch. 511	HB 687
16-11-122	amended	Ch. 511	HB 687
16-11-126	enacted	Ch. 511	HB 687
16-11-128	enacted	Ch. 511	HB 687
16-11-129	enacted	Ch. 511	HB 687
16-11-131	amended	Ch. 511	HB 687
16-11-132	amended	Ch. 511	HB 687
16-11-133	amended	Ch. 511	HB 687
16-11-141	amended	Ch. 511	HB 687
16-11-142	amended	Ch. 511	HB 687
16-11-143	amended	Ch. 511	HB 687
16-11-144	amended	Ch. 511	HB 687
16-11-145	amended	Ch. 511	HB 687
16-11-146	amended	Ch. 511	HB 687
16-11-147	amended	Ch. 511	HB 687
16-11-148	amended	Ch. 511	HB 687
16-11-149	amended	Ch. 511	HB 687
16-11-150	amended	Ch. 511	HB 687
16-11-155	amended	Ch. 511	HB 687
16-11-157	repealed	Ch. 511	HB 687
16-11-158	amended	Ch. 511	HB 687
16-11-159	enacted	Ch. 511	HB 687
16-11-201	repealed	Ch. 511	HB 687
16-11-202	repealed	Ch. 511	HB 687
16-11-203	repealed	Ch. 511	HB 687
16-11-204	repealed	Ch. 511	HB 687
16-11-205	repealed	Ch. 511	HB 687
16-11-206	repealed	Ch. 511	HB 687
16-11-402	amended	Ch. 324	HB 169
16-11-404	amended	Ch. 324	HB 169
16-11-502	amended	Ch. 324	HB 169
16-11-503	amended	Ch. 324	HB 169
16-11-507	amended	Ch. 324	HB 169
16-11-509	amended	Ch. 511	HB 687
16-11-511	amended	Ch. 324	HB 169
17-1-104	enacted	Ch. 121	SB 106
17-1-105	formerly 17-3-110	Ch. 121	SB 106
17-1-106	formerly 17-3-111	Ch. 121	SB 106
17-1-510	repealed	Ch. 121	SB 106
17-2-108	amended	Ch. 151	HB 44
17-2-131	amended	Ch. 130	SB 24
17-3-110	amended and renumbered 17-1-105	Ch. 121	SB 106
17-3-111	amended and renumbered 17-1-106	Ch. 121	SB 106
17-3-222	amended	Ch. 53	HB 86
17-3-240	amended	Ch. 568	SB 212
17-5-103	amended	Ch. 451	SB 292
17-5-111	enacted	Ch. 451	SB 292
17-5-205	amended	Ch. 9	HB 21
17-5-302	amended	Ch. 374	SB 58
17-5-304	amended	Ch. 374	SB 58
17-5-401	repealed	Ch. 374	SB 58
17-5-402	repealed	Ch. 374	SB 58
17-5-403	repealed	Ch. 374	SB 58
17-5-404	repealed	Ch. 374	SB 58
17-5-407	repealed	Ch. 374	SB 58
17-5-408	repealed	Ch. 374	SB 58
17-5-409	repealed	Ch. 374	SB 58
17-5-410	repealed	Ch. 374	SB 58
17-5-411	repealed	Ch. 374	SB 58

17-5-412	repealed	Ch. 374	SB	58
17-5-413	repealed	Ch. 374	SB	58
17-5-414	repealed	Ch. 374	SB	58
17-5-415	repealed	Ch. 374	SB	58
17-5-416	repealed	Ch. 374	SB	58
17-5-417	repealed	Ch. 374	SB	58
17-5-421	repealed	Ch. 374	SB	58
17-5-423	repealed	Ch. 374	SB	58
17-5-424	repealed	Ch. 374	SB	58
17-5-425	repealed	Ch. 374	SB	58
17-5-426	repealed	Ch. 374	SB	58
17-5-430	repealed	Ch. 374	SB	58
17-5-431	repealed	Ch. 374	SB	58
17-5-432	repealed	Ch. 374	SB	58
17-5-433	repealed	Ch. 374	SB	58
17-5-507	amended	Ch. 130	SB	24
17-5-601	repealed	Ch. 374	SB	58
17-5-602	repealed	Ch. 374	SB	58
17-5-603	repealed	Ch. 374	SB	58
17-5-604	repealed	Ch. 374	SB	58
17-5-605	repealed	Ch. 374	SB	58
17-5-606	repealed	Ch. 374	SB	58
17-5-607	repealed	Ch. 374	SB	58
17-5-608	repealed	Ch. 374	SB	58
17-5-609	repealed	Ch. 374	SB	58
17-5-610	repealed	Ch. 374	SB	58
17-5-611	repealed	Ch. 374	SB	58
17-5-612	repealed	Ch. 374	SB	58
17-5-613	repealed	Ch. 374	SB	58
17-5-614	repealed	Ch. 374	SB	58
17-5-615	repealed	Ch. 374	SB	58
17-5-616	repealed	Ch. 374	SB	58
17-5-617	repealed	Ch. 374	SB	58
17-5-618	repealed	Ch. 374	SB	58
17-5-619	repealed	Ch. 374	SB	58
17-5-620	repealed	Ch. 374	SB	58
17-5-703	amended	Ch. 588	HB	249
17-5-802	amended	Ch. 374	SB	58
17-5-803	amended	Ch. 374	SB	58
17-5-805	amended	Ch. 323	HB	142
	amended	Ch. 374	SB	58
17-5-820	amended	Ch. 590	HB	493
17-5-1612	enacted	Ch. 399	SB	288
17-5-2001	amended	Ch. 550	SB	442
17-6-317	amended	Ch. 26	HB	126
	amended	Ch. 452	SB	293
17-6-318	amended	Ch. 26	HB	126
17-6-407	amended	Ch. 130	SB	24
	amended	Ch. 204	SB	130
17-7-111	amended	Ch. 106	SB	23
17-7-138	amended	Ch. 58	HB	116
17-7-139	amended	Ch. 58	HB	116
17-7-160	enacted	Ch. 421	HB	35
17-7-304	amended	Ch. 565	SB	154
	amended	Ch. 581	HB	28
17-7-502	amended	Ch. 223	HB	301
	amended	Ch. 314	HB	53
	amended	Ch. 324	HB	169
	amended	Ch. 327	HB	204
	amended	Ch. 421	HB	35
	amended	Ch. 464	HB	102
	amended	Ch. 482	HB	414
	amended	Ch. 524	HB	756

17-7-502 (continued)	amended	Ch. 525	HB 776
	amended	Ch. 581	HB 28
	amended	Ch. 588	HB 249
	amended	Ch. 593	HB 584
	amended	Ch. 600	HB 728
	amended	Ch. 602	HB 757
17-8-231	amended	Ch. 312	HB 40
	repealed	Ch. 465	HB 146
17-8-311	amended	Ch. 432	HB 220
17-8-401	enacted	Ch. 465	HB 146
17-8-402	enacted	Ch. 465	HB 146
17-8-403	enacted	Ch. 465	HB 146
17-8-404	enacted	Ch. 465	HB 146
17-8-405	enacted	Ch. 465	HB 146
17-8-406	enacted	Ch. 465	HB 146
17-8-407	enacted	Ch. 465	HB 146
17-8-408	enacted	Ch. 465	HB 146
17-8-409	enacted	Ch. 465	HB 146
17-8-410	enacted	Ch. 465	HB 146
17-8-411	enacted	Ch. 465	HB 146
17-8-412	enacted	Ch. 465	HB 146
18-1-102	amended	Ch. 574	SB 342
18-2-101	amended	Ch. 374	SB 58
18-2-103	amended	Ch. 574	SB 342
18-2-201	amended	Ch. 186	HB 559
18-2-411	amended	Ch. 538	SB 217
18-2-501	enacted	Ch. 574	SB 342
18-2-502	enacted	Ch. 574	SB 342
18-2-503	enacted	Ch. 574	SB 342
18-4-124	amended	Ch. 574	SB 342
18-4-126	amended	Ch. 289	HB 67
18-4-132	amended	Ch. 289	HB 67
	amended	Ch. 449	SB 146
18-4-301	amended	Ch. 289	HB 67
18-4-303	amended	Ch. 289	HB 67
18-4-304	amended	Ch. 289	HB 67
18-4-308	amended	Ch. 289	HB 67
18-4-312	amended	Ch. 289	HB 67
18-4-313	amended	Ch. 289	HB 67
18-5-402	amended	Ch. 249	SB 335
18-8-210	enacted	Ch. 162	HB 212
19-2-303	amended	Ch. 329	HB 213
19-2-502	amended	Ch. 329	HB 213
19-2-602	amended	Ch. 329	HB 213
19-2-703	amended	Ch. 329	HB 213
19-2-704	amended	Ch. 329	HB 213
19-2-706	amended	Ch. 329	HB 213
19-2-707	amended	Ch. 381	SB 118
19-2-803	amended	Ch. 369	HB 587
19-2-903	amended	Ch. 329	HB 213
19-2-907	amended	Ch. 329	HB 213
19-2-908	amended	Ch. 329	HB 213
19-2-909	amended	Ch. 329	HB 213
19-3-108	amended	Ch. 329	HB 213
19-3-112	amended	Ch. 329	HB 213
19-3-201	amended	Ch. 329	HB 213
19-3-316	amended	Ch. 329	HB 213
19-3-318	amended	Ch. 329	HB 213
19-3-319	amended	Ch. 329	HB 213
19-3-401	amended	Ch. 329	HB 213
19-3-403	amended	Ch. 329	HB 213
19-3-412	amended	Ch. 329	HB 213
19-3-505	amended	Ch. 329	HB 213

19-3-908	amended	Ch. 329	HB 213
19-3-1002	amended	Ch. 329	HB 213
19-3-1005	amended	Ch. 329	HB 213
19-3-1015	amended	Ch. 329	HB 213
19-3-1204	amended	Ch. 329	HB 213
19-3-1501	amended	Ch. 329	HB 213
19-3-2104	amended	Ch. 329	HB 213
19-3-2111	amended	Ch. 329	HB 213
19-3-2112	amended	Ch. 329	HB 213
19-3-2114	amended	Ch. 329	HB 213
19-3-2116	amended	Ch. 329	HB 213
19-3-2117	amended	Ch. 329	HB 213
19-3-2121	amended	Ch. 329	HB 213
19-3-2126	amended	Ch. 329	HB 213
19-5-103	amended	Ch. 329	HB 213
19-5-402	amended	Ch. 329	HB 213
19-5-404	amended	Ch. 329	HB 213
19-5-410	amended	Ch. 329	HB 213
19-5-701	amended	Ch. 329	HB 213
19-5-902	amended	Ch. 329	HB 213
19-6-301	amended	Ch. 329	HB 213
19-6-401	amended	Ch. 428	HB 192
	amended	Ch. 464	HB 102
19-6-402	amended	Ch. 329	HB 213
19-6-404	amended	Ch. 329	HB 213
	amended	Ch. 428	HB 192
	amended	Ch. 464	HB 102
19-6-410	enacted	Ch. 464	HB 102
19-6-505	amended	Ch. 329	HB 213
19-6-709	amended	Ch. 329	HB 213
	amended	Ch. 464	HB 102
	amended (Void. Sec. 8, Ch. 500)	Ch. 500	HB 541
	amended	Ch. 596	HB 671
19-7-101	amended	Ch. 259	SB 370
19-7-301	amended	Ch. 259	SB 370
	amended	Ch. 329	HB 213
19-7-302	amended	Ch. 259	SB 370
19-7-403	amended	Ch. 329	HB 213
19-7-404	amended	Ch. 329	HB 213
19-7-410	enacted	Ch. 271	HB 105
19-7-612	amended	Ch. 36	HB 226
19-7-801	amended	Ch. 36	HB 226
	amended	Ch. 329	HB 213
19-7-810	repealed	Ch. 271	HB 105
19-7-1001	amended	Ch. 329	HB 213
19-8-101	amended	Ch. 366	SB 459
19-8-301	amended	Ch. 329	HB 213
19-8-502	amended	Ch. 329	HB 213
19-8-504	amended	Ch. 329	HB 213
19-8-801	amended	Ch. 329	HB 213
19-9-301	amended	Ch. 329	HB 213
19-9-703	amended	Ch. 329	HB 213
19-9-710	amended	Ch. 329	HB 213
19-9-804	amended	Ch. 329	HB 213
19-9-902	amended	Ch. 329	HB 213
19-9-905	amended	Ch. 329	HB 213
19-9-1202	amended	Ch. 329	HB 213
19-9-1207	amended	Ch. 329	HB 213
19-9-1208	amended	Ch. 329	HB 213
19-13-104	amended	Ch. 305	SB 491
19-13-301	amended	Ch. 329	HB 213
19-13-605	amended	Ch. 329	HB 213
19-13-704	amended	Ch. 305	SB 491

19-13-802	amended	Ch. 329	HB 213
19-13-803	amended	Ch. 305	SB 491
19-13-805	amended	Ch. 329	HB 213
19-13-902	amended	Ch. 305	SB 491
19-17-102	amended (Void. Sec. 4, Ch. 332)	Ch. 332	HB 346
19-17-108	amended	Ch. 212	SB 254
	amended	Ch. 329	HB 213
19-17-401	amended (Void. Sec. 4, Ch. 332)	Ch. 332	HB 346
	amended	Ch. 391	SB 197
19-17-404	amended	Ch. 391	SB 197
19-17-407	amended	Ch. 329	HB 213
19-18-501	amended	Ch. 193	HB 283
19-18-503	amended	Ch. 193	HB 283
19-18-504	amended	Ch. 193	HB 283
19-19-205	amended	Ch. 329	HB 213
19-20-208	amended	Ch. 320	HB 104
19-20-212	amended	Ch. 320	HB 104
19-20-302	amended	Ch. 320	HB 104
19-20-401	amended	Ch. 320	HB 104
19-20-407	amended	Ch. 320	HB 104
19-20-415	amended	Ch. 320	HB 104
19-20-426	enacted	Ch. 320	HB 104
19-20-427	enacted	Ch. 320	HB 104
19-20-602	amended	Ch. 320	HB 104
19-20-716	amended	Ch. 320	HB 104
19-20-718	amended	Ch. 320	HB 104
19-20-731	enacted	Ch. 320	HB 104
19-20-802	amended	Ch. 320	HB 104
19-20-804	amended	Ch. 320	HB 104
19-20-806	amended	Ch. 320	HB 104
19-20-1001	amended	Ch. 320	HB 104
19-50-103	amended	Ch. 329	HB 213
19-50-104	amended	Ch. 329	HB 213
20-1-101	amended	Ch. 138	SB 170
	amended	Ch. 208	SB 152
	amended	Ch. 215	SB 359
	amended	Ch. 570	SB 224
20-1-102	enacted	Ch. 208	SB 152
20-1-220	amended	Ch. 268	HB 643
20-1-301	amended	Ch. 138	SB 170
20-1-302	amended	Ch. 138	SB 170
20-1-304	amended	Ch. 138	SB 170
20-2-115	amended	Ch. 138	SB 170
	repealed	Ch. 208	SB 152
20-2-121	amended	Ch. 138	SB 170
20-3-205	amended	Ch. 463	HB 83
	amended	Ch. 510	HB 681
20-3-302	amended	Ch. 510	HB 681
20-3-312	amended	Ch. 510	HB 681
20-3-322	amended	Ch. 438	HB 317
20-3-324	amended	Ch. 138	SB 170
20-3-325	amended	Ch. 196	HB 660
20-3-351	amended	Ch. 91	HB 397
	amended (Void. Sec. 3, Ch. 91)	Ch. 130	SB 24
20-3-363	enacted	Ch. 462	HB 63
20-5-109	amended	Ch. 138	SB 170
20-5-321	amended	Ch. 463	HB 83
20-5-322	amended	Ch. 132	SB 57
	amended	Ch. 215	SB 359
20-5-323	amended	Ch. 462	HB 63
20-5-324	amended	Ch. 463	HB 83
20-5-403	amended	Ch. 156	HB 162
20-5-420	enacted	Ch. 306	HB 396

20-6-110.	enacted.	Ch. 521	HB 747
20-6-203.	repealed.	Ch. 510	HB 681
20-6-204.	repealed.	Ch. 510	HB 681
20-6-205.	repealed.	Ch. 510	HB 681
20-6-206.	amended.	Ch. 503	HB 574
	repealed.	Ch. 510	HB 681
20-6-207.	repealed.	Ch. 510	HB 681
20-6-208.	repealed.	Ch. 510	HB 681
20-6-209.	amended.	Ch. 138	SB 170
	amended.	Ch. 510	HB 681
20-6-210.	repealed.	Ch. 510	HB 681
20-6-211.	repealed.	Ch. 510	HB 681
20-6-212.	repealed.	Ch. 130	SB 24
20-6-301.	amended.	Ch. 91	HB 397
20-6-307.	amended.	Ch. 510	HB 681
20-6-315.	repealed.	Ch. 510	HB 681
20-6-316.	repealed.	Ch. 510	HB 681
20-6-317.	repealed.	Ch. 510	HB 681
20-6-318.	amended.	Ch. 503	HB 574
	repealed.	Ch. 510	HB 681
20-6-319.	repealed.	Ch. 510	HB 681
20-6-321.	repealed.	Ch. 510	HB 681
20-6-421.	enacted.	Ch. 510	HB 681
20-6-422.	enacted and amended.	Ch. 510	HB 681
20-6-423.	enacted and amended.	Ch. 510	HB 681
20-6-424.	enacted.	Ch. 510	HB 681
20-6-606.	amended.	Ch. 574	SB 342
20-6-607.	amended.	Ch. 462	HB 63
20-6-704.	amended.	Ch. 510	HB 681
20-7-101.	amended.	Ch. 208	SB 152
20-7-102.	amended.	Ch. 462	HB 63
20-7-118.	enacted.	Ch. 570	SB 224
20-7-402.	amended.	Ch. 255	SB 363
20-7-403.	amended.	Ch. 255	SB 363
20-7-411.	amended.	Ch. 255	SB 363
20-7-412.	repealed.	Ch. 255	SB 363
20-7-414.	amended.	Ch. 255	SB 363
20-7-420.	amended.	Ch. 132	SB 57
	amended.	Ch. 255	SB 363
	amended.	Ch. 463	HB 83
20-7-431.	amended.	Ch. 255	SB 363
20-7-441.	repealed.	Ch. 255	SB 363
20-7-442.	repealed.	Ch. 255	SB 363
20-7-443.	amended.	Ch. 255	SB 363
20-7-461.	amended.	Ch. 255	SB 363
20-7-470.	enacted.	Ch. 490	HB 438
20-7-471.	enacted.	Ch. 490	HB 438
20-7-472.	enacted.	Ch. 490	HB 438
20-7-473.	enacted.	Ch. 490	HB 438
20-7-474.	enacted.	Ch. 490	HB 438
20-7-475.	enacted.	Ch. 490	HB 438
20-7-602.	amended.	Ch. 490	HB 438
20-8-104.	amended.	Ch. 41	HB 20
20-8-107.	amended.	Ch. 151	HB 44
20-9-130.	amended.	Ch. 462	HB 63
20-9-131.	amended.	Ch. 462	HB 63
20-9-141.	amended.	Ch. 130	SB 24
20-9-142.	amended.	Ch. 462	HB 63
20-9-151.	amended.	Ch. 462	HB 63
20-9-152.	amended.	Ch. 462	HB 63
20-9-204.	amended.	Ch. 162	HB 212
	amended.	Ch. 574	SB 342

20-9-212	amended	Ch. 196	HB 660
	amended	Ch. 463	HB 83
20-9-303	amended	Ch. 208	SB 152
20-9-306	amended	Ch. 462	HB 63
20-9-307	repealed	Ch. 208	SB 152
20-9-308	amended	Ch. 190	HB 624
	amended	Ch. 462	HB 63
20-9-309	enacted	Ch. 208	SB 152
20-9-311	amended	Ch. 138	SB 170
	amended	Ch. 215	SB 359
	amended	Ch. 462	HB 63
	amended	Ch. 510	HB 681
20-9-314	amended	Ch. 462	HB 63
20-9-321	amended	Ch. 462	HB 63
20-9-331	amended	Ch. 542	SB 285
20-9-333	amended	Ch. 542	SB 285
20-9-335	amended	Ch. 463	HB 83
20-9-353	amended	Ch. 462	HB 63
20-9-360	amended	Ch. 542	SB 285
20-9-366	amended	Ch. 462	HB 63
20-9-375	repealed	Ch. 462	HB 63
20-9-406	amended	Ch. 462	HB 63
20-9-408	amended	Ch. 451	SB 292
20-9-410	amended	Ch. 451	SB 292
20-9-428	amended	Ch. 503	HB 574
20-9-443	amended	Ch. 462	HB 63
20-9-464	amended	Ch. 451	SB 292
20-9-501	amended	Ch. 130	SB 24
	amended	Ch. 405	SB 333
20-9-707	amended	Ch. 132	SB 57
20-9-801	amended	Ch. 138	SB 170
20-9-802	amended	Ch. 138	SB 170
20-9-805	amended	Ch. 138	SB 170
20-9-806	amended	Ch. 138	SB 170
20-10-105	amended	Ch. 132	SB 57
	amended	Ch. 463	HB 83
20-10-126	amended	Ch. 508	HB 652
20-10-144	amended	Ch. 130	SB 24
	amended	Ch. 255	SB 363
20-10-146	amended	Ch. 130	SB 24
20-15-104	amended	Ch. 162	HB 212
20-15-221	amended	Ch. 130	SB 24
20-20-303	amended	Ch. 130	SB 24
20-25-110	enacted	Ch. 521	HB 747
20-25-305	amended	Ch. 139	SB 171
20-25-308	amended	Ch. 130	SB 24
20-25-421	amended	Ch. 577	SB 445
20-25-428	amended	Ch. 147	HB 16
20-25-902	amended	Ch. 549	SB 432
20-26-601	enacted	Ch. 489	HB 435
20-26-602	enacted	Ch. 489	HB 435
20-26-603	enacted	Ch. 489	HB 435
20-26-611	enacted	Ch. 489	HB 435
20-26-612	enacted	Ch. 489	HB 435
20-26-613	enacted	Ch. 489	HB 435
22-1-103	amended	Ch. 73	HB 184
22-1-304	amended	Ch. 453	SB 301
22-1-326	amended	Ch. 203	SB 129
22-1-327	amended	Ch. 203	SB 129
22-1-330	amended	Ch. 203	SB 129
22-1-402	amended	Ch. 73	HB 184
22-1-403	repealed	Ch. 73	HB 184
22-1-404	amended	Ch. 73	HB 184

MONTANA SESSION LAWS 2005

3244

22-1-702	amended	Ch. 203	SB 129
22-1-705	amended	Ch. 203	SB 129
22-1-707	amended	Ch. 203	SB 129
22-1-716	enacted	Ch. 203	SB 129
22-2-106	amended	Ch. 115	SB 69
22-3-107	amended	Ch. 148	HB 17
22-3-114	amended	Ch. 148	HB 17
22-3-603	amended	Ch. 10	HB 27
23-1-105	amended	Ch. 596	HB 671
23-1-109	amended	Ch. 98	HB 564
23-1-117	amended	Ch. 234	SB 76
23-1-128	amended	Ch. 542	SB 285
23-2-409	amended	Ch. 86	HB 312
23-2-502	amended	Ch. 130	SB 24
	amended	Ch. 237	SB 126
	amended	Ch. 596	HB 671
23-2-511	amended	Ch. 130	SB 24
	amended	Ch. 237	SB 126
	amended	Ch. 596	HB 671
23-2-512	amended	Ch. 237	SB 126
	amended	Ch. 542	SB 285
23-2-513	amended	Ch. 237	SB 126
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
23-2-514	amended	Ch. 130	SB 24
23-2-515	amended	Ch. 130	SB 24
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
23-2-516	repealed 1/1/2006	Ch. 542	SB 285
23-2-517	repealed 1/1/2006	Ch. 542	SB 285
23-2-518	repealed 1/1/2006	Ch. 542	SB 285
23-2-519	amended	Ch. 542	SB 285
23-2-521	amended	Ch. 130	SB 24
23-2-601	amended	Ch. 542	SB 285
23-2-614	amended	Ch. 130	SB 24
	amended	Ch. 542	SB 285
23-2-616	amended	Ch. 542	SB 285
	amended (Void. Sec. 132, Ch. 596)	Ch. 596	HB 671
23-2-619	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
23-2-626	repealed 1/1/2006	Ch. 542	SB 285
23-2-631	amended	Ch. 542	SB 285
23-2-634	amended	Ch. 542	SB 285
23-2-641	amended	Ch. 542	SB 285
23-2-642	amended	Ch. 542	SB 285
23-2-644	amended	Ch. 542	SB 285
23-2-803	repealed 1/1/2006	Ch. 542	SB 285
23-2-804	amended	Ch. 542	SB 285
23-2-809	amended	Ch. 542	SB 285
23-2-817	repealed 1/1/2006	Ch. 542	SB 285
23-2-818	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
23-3-405	amended	Ch. 202	SB 105
23-3-501	amended	Ch. 467	HB 182
23-4-105	amended	Ch. 314	HB 53
	amended	Ch. 467	HB 182
23-4-201	amended	Ch. 467	HB 182
23-4-202	amended	Ch. 314	HB 53
23-4-204	amended	Ch. 314	HB 53
23-4-302	amended	Ch. 314	HB 53
23-4-304	amended	Ch. 314	HB 53
23-5-112	amended	Ch. 134	SB 84
	amended	Ch. 201	SB 103

23-5-113	amended	Ch. 134	SB 84
23-5-123	amended	Ch. 134	SB 84
23-5-152	amended	Ch. 134	SB 84
23-5-153	amended	Ch. 134	SB 84
23-5-180	enacted	Ch. 134	SB 84
23-5-181	enacted	Ch. 134	SB 84
23-5-182	enacted	Ch. 134	SB 84
23-5-183	enacted	Ch. 134	SB 84
23-5-184	enacted	Ch. 134	SB 84
23-5-185	enacted	Ch. 134	SB 84
23-5-412	amended	Ch. 134	SB 84
23-5-602	amended	Ch. 134	SB 84
	amended	Ch. 319	HB 89
23-5-610	amended	Ch. 319	HB 89
23-5-611	amended	Ch. 319	HB 89
23-5-612	amended	Ch. 528	HB 802
23-5-621	amended	Ch. 134	SB 84
	amended	Ch. 319	HB 89
23-5-625	amended	Ch. 134	SB 84
23-5-631	amended	Ch. 327	HB 204
23-5-637	amended	Ch. 319	HB 89
23-5-638	repealed	Ch. 319	HB 89
25-1-201	amended (Void. Sec. 9, Ch. 493)	Ch. 114	SB 67
	amended	Ch. 408	SB 406
	amended	Ch. 493	HB 476
25-1-1101	amended	Ch. 392	SB 231
25-2-122	amended	Ch. 217	SB 375
25-3-301	amended	Ch. 392	SB 231
25-9-205	amended	Ch. 392	SB 231
25-9-506	amended	Ch. 163	HB 223
25-9-603	amended	Ch. 163	HB 223
25-9-609	amended	Ch. 163	HB 223
25-9-801	repealed	Ch. 163	HB 223
25-9-802	repealed	Ch. 163	HB 223
25-9-803	repealed	Ch. 163	HB 223
25-9-804	repealed	Ch. 163	HB 223
25-9-805	repealed	Ch. 163	HB 223
25-9-806	repealed	Ch. 163	HB 223
25-9-807	repealed	Ch. 163	HB 223
25-9-808	repealed	Ch. 163	HB 223
25-9-809	repealed	Ch. 163	HB 223
25-13-402	amended	Ch. 392	SB 231
25-33-301	amended	Ch. 557	HB 367
26-1-802	amended	Ch. 158	HB 191
26-1-814	enacted	Ch. 42	HB 24
26-2-501	amended	Ch. 449	SB 146
26-2-506	amended	Ch. 449	SB 146
26-2-508	amended	Ch. 449	SB 146
26-2-510	amended	Ch. 449	SB 146
26-2-601	enacted	Ch. 49	HB 64
27-1-306	amended	Ch. 130	SB 24
27-1-717	amended	Ch. 392	SB 231
27-1-738	enacted	Ch. 43	HB 25
27-1-739	enacted	Ch. 229	SB 21
27-1-746	enacted	Ch. 246	SB 322
27-2-209	amended	Ch. 412	SB 458
27-6-704	amended	Ch. 253	SB 352
27-12-104	amended	Ch. 199	HB 709
27-12-206	amended	Ch. 467	HB 182
27-12-402	amended	Ch. 199	HB 709
27-12-605	amended	Ch. 199	HB 709
28-1-1001	amended	Ch. 392	SB 231

MONTANA SESSION LAWS 2005

3246

28-2-722	amended	Ch. 139	SB 171
	repealed	Ch. 166	HB 257
28-2-2104	amended	Ch. 244	SB 286
28-2-2110	amended	Ch. 244	SB 286
28-10-103	amended	Ch. 44	HB 26
30-1-101	amended	Ch. 575	SB 401
30-1-102	amended	Ch. 575	SB 401
30-1-105	repealed	Ch. 575	SB 401
30-1-107	amended	Ch. 575	SB 401
30-1-110	repealed	Ch. 575	SB 401
30-1-111	repealed	Ch. 575	SB 401
30-1-201	amended	Ch. 575	SB 401
30-1-204	amended	Ch. 575	SB 401
30-1-205	amended	Ch. 575	SB 401
30-1-206	repealed	Ch. 575	SB 401
30-1-208	amended	Ch. 575	SB 401
30-1-209	amended	Ch. 575	SB 401
30-1-210	enacted	Ch. 575	SB 401
30-1-211	enacted	Ch. 575	SB 401
30-1-212	enacted	Ch. 575	SB 401
30-1-301	enacted	Ch. 575	SB 401
30-1-302	enacted	Ch. 575	SB 401
30-2-104	amended	Ch. 575	SB 401
30-2-310	amended	Ch. 575	SB 401
30-2-323	amended	Ch. 575	SB 401
30-2-401	amended	Ch. 575	SB 401
30-2-503	amended	Ch. 575	SB 401
30-2-506	amended	Ch. 575	SB 401
30-2-509	amended	Ch. 575	SB 401
30-2-605	amended	Ch. 575	SB 401
30-2-705	amended	Ch. 575	SB 401
30-2A-103	amended	Ch. 575	SB 401
30-2A-514	amended	Ch. 575	SB 401
30-2A-518	amended	Ch. 575	SB 401
30-2A-519	amended	Ch. 575	SB 401
30-2A-526	amended	Ch. 575	SB 401
30-2A-527	amended	Ch. 575	SB 401
30-2A-528	amended	Ch. 575	SB 401
30-3-102	amended	Ch. 575	SB 401
30-4-104	amended	Ch. 575	SB 401
30-4A-105	amended	Ch. 575	SB 401
30-4A-106	amended	Ch. 575	SB 401
30-5-123	amended	Ch. 575	SB 401
30-7-102	amended	Ch. 575	SB 401
30-7-103	amended	Ch. 575	SB 401
30-7-104	amended	Ch. 575	SB 401
30-7-105	repealed	Ch. 575	SB 401
30-7-106	enacted	Ch. 575	SB 401
30-7-107	enacted	Ch. 575	SB 401
30-7-201	amended	Ch. 575	SB 401
30-7-202	amended	Ch. 575	SB 401
30-7-203	amended	Ch. 575	SB 401
30-7-204	amended	Ch. 575	SB 401
30-7-205	amended	Ch. 575	SB 401
30-7-206	amended	Ch. 575	SB 401
30-7-207	amended	Ch. 575	SB 401
30-7-208	amended	Ch. 575	SB 401
30-7-209	amended	Ch. 575	SB 401
30-7-210	amended	Ch. 575	SB 401
30-7-301	amended	Ch. 575	SB 401
30-7-302	amended	Ch. 575	SB 401
30-7-303	amended	Ch. 575	SB 401
30-7-304	amended	Ch. 575	SB 401

30-7-305	amended	Ch. 575	SB 401
30-7-307	amended	Ch. 575	SB 401
30-7-308	amended	Ch. 575	SB 401
30-7-309	amended	Ch. 575	SB 401
30-7-401	amended	Ch. 575	SB 401
30-7-402	amended	Ch. 575	SB 401
30-7-403	amended	Ch. 575	SB 401
30-7-404	amended	Ch. 575	SB 401
30-7-501	amended	Ch. 575	SB 401
30-7-502	amended	Ch. 575	SB 401
30-7-503	amended	Ch. 575	SB 401
30-7-504	amended	Ch. 575	SB 401
30-7-506	amended	Ch. 575	SB 401
30-7-507	amended	Ch. 575	SB 401
30-7-508	amended	Ch. 575	SB 401
30-7-509	amended	Ch. 575	SB 401
30-7-601	amended	Ch. 575	SB 401
30-7-602	amended	Ch. 575	SB 401
30-7-603	amended	Ch. 575	SB 401
30-7-701	repealed	Ch. 575	SB 401
30-7-702	repealed	Ch. 575	SB 401
30-7-703	repealed	Ch. 575	SB 401
30-7-704	repealed	Ch. 575	SB 401
30-7-705	repealed	Ch. 575	SB 401
30-7-706	repealed	Ch. 575	SB 401
30-8-113	amended	Ch. 575	SB 401
30-9A-102	amended	Ch. 575	SB 401
30-9A-109	amended	Ch. 416	SB 481
30-9A-203	amended	Ch. 575	SB 401
30-9A-207	amended	Ch. 575	SB 401
30-9A-208	amended	Ch. 575	SB 401
30-9A-301	amended	Ch. 575	SB 401
30-9A-302	amended	Ch. 207	SB 136
30-9A-310	amended	Ch. 575	SB 401
30-9A-312	amended	Ch. 575	SB 401
30-9A-313	amended	Ch. 575	SB 401
30-9A-314	amended	Ch. 575	SB 401
30-9A-317	amended	Ch. 575	SB 401
30-9A-338	amended	Ch. 575	SB 401
30-9A-501	amended	Ch. 207	SB 136
30-9A-601	amended	Ch. 575	SB 401
30-10-115	amended	Ch. 469	HB 188
30-10-209	amended	Ch. 469	HB 188
30-10-909	amended	Ch. 513	HB 701
30-11-701	amended	Ch. 542	SB 285
30-12-101	amended	Ch. 34	HB 195
30-12-203	amended	Ch. 34	HB 195
30-12-701	enacted	Ch. 279	HB 406
30-12-702	enacted	Ch. 279	HB 406
30-12-703	enacted	Ch. 279	HB 406
30-12-704	enacted	Ch. 279	HB 406
30-12-705	enacted	Ch. 279	HB 406
30-12-706	enacted	Ch. 279	HB 406
30-13-204	amended	Ch. 71	HB 180
30-13-208	amended	Ch. 71	HB 180
30-13-210	amended	Ch. 71	HB 180
30-13-212	amended	Ch. 71	HB 180
30-14-102	amended	Ch. 280	HB 425
	amended	Ch. 291	HB 295
30-14-108	enacted	Ch. 291	HB 295
30-14-121	amended	Ch. 280	HB 425
30-14-131	amended	Ch. 280	HB 425
30-14-143	amended	Ch. 280	HB 425

MONTANA SESSION LAWS 2005

3248

30-14-201	amended	Ch. 280	HB 425
30-14-202	amended	Ch. 280	HB 425
30-14-220	amended	Ch. 280	HB 425
30-14-222	amended	Ch. 130	SB 24
	amended	Ch. 280	HB 425
30-14-223	amended	Ch. 130	SB 24
30-14-226	amended	Ch. 280	HB 425
30-14-901	amended	Ch. 130	SB 24
30-14-1403	amended	Ch. 280	HB 425
30-14-1407	amended	Ch. 130	SB 24
	amended	Ch. 280	HB 425
30-14-1412	amended	Ch. 280	HB 425
30-14-1413	amended	Ch. 280	HB 425
30-14-1601	amended	Ch. 280	HB 425
30-14-1603	amended	Ch. 280	HB 425
30-14-1701	enacted	Ch. 518	HB 732
30-14-1702	enacted	Ch. 518	HB 732
30-14-1703	enacted	Ch. 518	HB 732
30-14-1704	enacted	Ch. 518	HB 732
30-14-1705	enacted	Ch. 518	HB 732
30-14-1721	enacted	Ch. 518	HB 732
30-14-1722	enacted	Ch. 518	HB 732
30-14-2001	enacted	Ch. 272	HB 140
30-14-2002	enacted	Ch. 272	HB 140
30-14-2003	enacted	Ch. 272	HB 140
30-14-2004	enacted	Ch. 272	HB 140
30-14-2010	enacted	Ch. 272	HB 140
30-14-2013	enacted	Ch. 272	HB 140
30-14-2015	enacted	Ch. 272	HB 140
30-16-201	amended	Ch. 427	HB 179
30-16-301	amended	Ch. 47	HB 54
30-16-302	amended	Ch. 427	HB 179
30-16-303	amended	Ch. 427	HB 179
30-17-101	enacted	Ch. 173	HB 306
30-17-102	enacted	Ch. 173	HB 306
30-18-103	amended	Ch. 575	SB 401
30-18-115	amended	Ch. 575	SB 401
31-1-104	amended	Ch. 125	SB 454
31-1-704	amended	Ch. 163	HB 223
31-1-705	amended	Ch. 119	SB 99
31-1-714	amended	Ch. 119	SB 99
31-1-715	amended	Ch. 210	SB 165
31-1-723	amended	Ch. 210	SB 165
31-1-802	amended	Ch. 163	HB 223
31-1-805	amended	Ch. 120	SB 100
31-1-816	amended	Ch. 210	SB 165
31-2-341	amended	Ch. 440	HB 345
31-3-115	amended	Ch. 518	HB 732
31-3-201	repealed	Ch. 272	HB 140
31-3-202	repealed	Ch. 272	HB 140
31-3-203	repealed	Ch. 272	HB 140
32-1-101	amended	Ch. 163	HB 223
32-1-102	amended	Ch. 163	HB 223
32-1-103	repealed	Ch. 15	HB 118
32-1-112	amended	Ch. 71	HB 180
32-1-202	amended	Ch. 163	HB 223
32-1-301	amended	Ch. 163	HB 223
32-1-371	amended	Ch. 15	HB 118
32-1-372	amended	Ch. 15	HB 118
32-1-446	amended	Ch. 163	HB 223
32-1-461	amended	Ch. 163	HB 223
32-1-462	amended	Ch. 163	HB 223
32-1-464	amended	Ch. 163	HB 223

32-1-468	amended	Ch. 163	HB 223
32-1-473	amended	Ch. 163	HB 223
32-1-491	amended	Ch. 163	HB 223
32-1-492	amended	Ch. 163	HB 223
32-1-501	amended	Ch. 163	HB 223
32-1-1001	amended	Ch. 15	HB 118
32-5-103	amended	Ch. 125	SB 454
32-5-301	amended	Ch. 125	SB 454
32-5-306	amended	Ch. 97	HB 557
32-5-308	amended	Ch. 64	HB 154
32-6-102	amended	Ch. 77	HB 209
32-8-101	repealed	Ch. 163	HB 223
32-8-102	repealed	Ch. 163	HB 223
32-8-103	repealed	Ch. 163	HB 223
32-8-104	repealed	Ch. 163	HB 223
32-8-105	repealed	Ch. 163	HB 223
32-8-106	repealed	Ch. 163	HB 223
32-8-107	repealed	Ch. 163	HB 223
32-8-201	repealed	Ch. 163	HB 223
32-8-202	repealed	Ch. 163	HB 223
32-8-203	repealed	Ch. 163	HB 223
32-8-204	repealed	Ch. 163	HB 223
32-8-205	repealed	Ch. 163	HB 223
32-8-301	repealed	Ch. 163	HB 223
32-8-302	repealed	Ch. 163	HB 223
32-8-303	repealed	Ch. 163	HB 223
32-8-304	repealed	Ch. 163	HB 223
32-8-306	repealed	Ch. 163	HB 223
32-8-308	repealed	Ch. 163	HB 223
32-8-309	repealed	Ch. 163	HB 223
32-8-311	repealed	Ch. 163	HB 223
32-8-312	repealed	Ch. 163	HB 223
32-8-314	repealed	Ch. 163	HB 223
32-8-315	repealed	Ch. 163	HB 223
32-8-316	repealed	Ch. 163	HB 223
32-8-401	repealed	Ch. 163	HB 223
32-8-402	repealed	Ch. 163	HB 223
32-8-403	repealed	Ch. 163	HB 223
32-8-404	repealed	Ch. 163	HB 223
32-8-501	repealed	Ch. 163	HB 223
32-8-502	repealed	Ch. 163	HB 223
32-8-503	repealed	Ch. 163	HB 223
32-8-504	repealed	Ch. 163	HB 223
32-8-505	repealed	Ch. 163	HB 223
32-8-506	repealed	Ch. 163	HB 223
32-8-507	repealed	Ch. 163	HB 223
32-8-508	repealed	Ch. 163	HB 223
32-8-509	repealed	Ch. 163	HB 223
32-8-510	repealed	Ch. 163	HB 223
32-8-515	repealed	Ch. 163	HB 223
32-8-516	repealed	Ch. 163	HB 223
32-8-517	repealed	Ch. 163	HB 223
32-8-518	repealed	Ch. 163	HB 223
32-8-521	repealed	Ch. 163	HB 223
32-8-522	repealed	Ch. 163	HB 223
32-8-523	repealed	Ch. 163	HB 223
32-8-524	repealed	Ch. 163	HB 223
32-8-601	repealed	Ch. 163	HB 223
32-8-602	repealed	Ch. 163	HB 223
32-8-603	repealed	Ch. 163	HB 223
32-9-102	amended	Ch. 301	SB 274
32-9-103	amended	Ch. 136	SB 117
32-9-104	amended	Ch. 301	SB 274

MONTANA SESSION LAWS 2005

3250

32-9-109	amended	Ch. 301	SB 274
32-9-115	amended	Ch. 136	SB 117
32-9-117	amended	Ch. 368	HB 71
32-9-121	amended	Ch. 136	SB 117
32-9-122	amended	Ch. 368	HB 71
32-9-130	amended	Ch. 136	SB 117
33-1-107	repealed	Ch. 456	SB 380
33-1-318	amended	Ch. 456	SB 380
33-1-501	amended	Ch. 409	SB 434
33-1-1301	amended	Ch. 456	SB 380
33-1-1302	amended	Ch. 456	SB 380
33-2-101	amended	Ch. 562	SB 114
33-2-104	amended	Ch. 562	SB 114
33-2-302	amended	Ch. 191	HB 631
33-2-305	amended	Ch. 469	HB 188
33-2-523	amended	Ch. 469	HB 188
33-2-532	repealed	Ch. 469	HB 188
33-2-533	repealed	Ch. 469	HB 188
33-2-534	repealed	Ch. 469	HB 188
33-2-535	repealed	Ch. 469	HB 188
33-2-701	amended	Ch. 206	SB 135
	amended	Ch. 469	HB 188
33-2-705	amended	Ch. 537	SB 133
33-2-708	amended	Ch. 552	SB 486
33-2-712	amended	Ch. 396	SB 275
33-3-431	amended	Ch. 469	HB 188
33-4-101	amended	Ch. 469	HB 188
33-4-503	amended	Ch. 469	HB 188
33-10-105	amended	Ch. 29	HB 168
	amended	Ch. 195	HB 653
33-10-110	amended	Ch. 29	HB 168
33-10-203	amended	Ch. 469	HB 188
33-11-105	amended	Ch. 475	HB 331
33-12-107	amended	Ch. 469	HB 188
33-12-113	enacted	Ch. 109	SB 37
33-15-1103	amended	Ch. 263	SB 457
33-15-1105	amended	Ch. 263	SB 457
	amended	Ch. 498	HB 537
33-16-203	amended	Ch. 576	SB 443
33-16-222	amended	Ch. 469	HB 188
33-16-230	enacted	Ch. 576	SB 443
33-17-102	amended	Ch. 140	SB 188
	amended	Ch. 469	HB 188
33-17-211	amended	Ch. 469	HB 188
33-17-220	amended	Ch. 469	HB 188
33-17-301	amended	Ch. 469	HB 188
33-17-401	amended	Ch. 469	HB 188
33-17-503	amended	Ch. 469	HB 188
33-17-1201	amended	Ch. 38	HB 300
33-17-1202	amended	Ch. 38	HB 300
33-17-1203	amended	Ch. 38	HB 300
	amended	Ch. 469	HB 188
33-17-1204	amended	Ch. 38	HB 300
33-17-1205	amended	Ch. 38	HB 300
	amended	Ch. 469	HB 188
33-17-1502	amended	Ch. 469	HB 188
33-18-210	amended	Ch. 363	SB 311
33-18-224	amended	Ch. 407	SB 388
33-18-225	enacted	Ch. 251	SB 349
33-18-232	amended	Ch. 469	HB 188
33-18-401	amended	Ch. 562	SB 114
33-18-601	enacted	Ch. 363	SB 311
33-18-602	enacted	Ch. 363	SB 311

33-18-603	enacted	Ch. 363	SB 311
33-18-604	enacted	Ch. 363	SB 311
33-18-605	enacted	Ch. 363	SB 311
33-18-606	enacted	Ch. 363	SB 311
33-18-607	enacted	Ch. 363	SB 311
33-18-608	enacted	Ch. 363	SB 311
33-18-609	enacted	Ch. 363	SB 311
33-18-610	enacted	Ch. 363	SB 311
33-18-611	enacted	Ch. 363	SB 311
33-18-1006	amended	Ch. 407	SB 388
33-19-105	amended	Ch. 469	HB 188
33-19-321	enacted	Ch. 518	HB 732
33-20-105	amended	Ch. 469	HB 188
33-20-505	amended	Ch. 66	HB 157
33-20-704	amended	Ch. 469	HB 188
33-20-1101	amended	Ch. 469	HB 188
33-20-1303	amended	Ch. 552	SB 486
33-20-1313	amended	Ch. 552	SB 486
33-20-1315	amended	Ch. 552	SB 486
33-20-1401	enacted	Ch. 351	SB 122
33-20-1402	enacted	Ch. 351	SB 122
33-20-1403	enacted	Ch. 351	SB 122
33-20-1404	enacted	Ch. 351	SB 122
33-20-1405	enacted	Ch. 351	SB 122
33-20-1406	enacted	Ch. 351	SB 122
33-20-1407	enacted	Ch. 351	SB 122
33-20-1408	enacted	Ch. 351	SB 122
33-20-1409	enacted	Ch. 351	SB 122
33-20-1410	enacted	Ch. 351	SB 122
33-20-1411	enacted	Ch. 351	SB 122
33-20-1412	enacted	Ch. 351	SB 122
33-22-101	amended	Ch. 290	HB 156
	amended	Ch. 469	HB 188
33-22-111	amended	Ch. 519	HB 737
33-22-114	amended	Ch. 519	HB 737
33-22-136	amended (Void. Sec. 4, Ch. 332)	Ch. 332	HB 346
33-22-140	amended	Ch. 130	SB 24
	amended	Ch. 469	HB 188
33-22-150	enacted	Ch. 290	HB 156
33-22-151	enacted	Ch. 290	HB 156
33-22-262	amended	Ch. 174	HB 318
33-22-508	amended	Ch. 469	HB 188
33-22-1501	amended	Ch. 469	HB 188
33-22-1502	amended	Ch. 469	HB 188
33-22-1513	amended	Ch. 469	HB 188
33-22-1514	amended	Ch. 469	HB 188
33-22-1515	amended	Ch. 469	HB 188
33-22-1516	amended	Ch. 469	HB 188
33-22-1517	amended	Ch. 469	HB 188
33-22-1803	amended	Ch. 469	HB 188
33-22-1815	amended	Ch. 595	HB 667
33-22-2001	enacted	Ch. 595	HB 667
33-22-2002	enacted	Ch. 595	HB 667
33-22-2003	enacted	Ch. 595	HB 667
33-22-2004	enacted	Ch. 595	HB 667
33-22-2005	enacted	Ch. 595	HB 667
33-22-2006	enacted	Ch. 595	HB 667
33-22-2007	enacted	Ch. 595	HB 667
33-22-2008	enacted	Ch. 595	HB 667
33-22-2009	enacted	Ch. 595	HB 667
33-23-204	amended	Ch. 468	HB 186
	amended	Ch. 542	SB 285
33-23-310	enacted	Ch. 213	SB 316

33-23-401	amended	Ch. 263	SB 457
33-23-501	enacted	Ch. 475	HB 331
33-23-502	enacted	Ch. 475	HB 331
33-23-503	enacted	Ch. 475	HB 331
33-23-507	enacted	Ch. 475	HB 331
33-23-508	enacted	Ch. 475	HB 331
33-23-509	enacted	Ch. 475	HB 331
33-23-510	enacted	Ch. 475	HB 331
33-23-511	enacted	Ch. 475	HB 331
33-23-512	enacted	Ch. 475	HB 331
33-23-513	enacted	Ch. 475	HB 331
33-23-514	enacted	Ch. 475	HB 331
33-23-515	enacted	Ch. 475	HB 331
33-23-519	enacted	Ch. 475	HB 331
33-23-520	enacted	Ch. 475	HB 331
33-23-521	enacted	Ch. 475	HB 331
33-23-522	enacted	Ch. 475	HB 331
33-23-523	enacted	Ch. 475	HB 331
33-23-524	enacted	Ch. 475	HB 331
33-23-525	enacted	Ch. 475	HB 331
33-23-526	enacted	Ch. 475	HB 331
33-24-103	amended	Ch. 469	HB 188
33-28-105	amended	Ch. 205	SB 134
	amended	Ch. 469	HB 188
33-28-201	amended	Ch. 205	SB 134
33-28-202	amended	Ch. 469	HB 188
33-28-207	amended	Ch. 205	SB 134
33-30-1013	amended	Ch. 467	HB 182
33-31-301	amended	Ch. 409	SB 434
33-38-101	enacted	Ch. 456	SB 380
33-38-102	enacted	Ch. 456	SB 380
33-38-103	enacted	Ch. 456	SB 380
33-38-104	enacted	Ch. 456	SB 380
33-38-105	enacted	Ch. 456	SB 380
33-38-106	enacted	Ch. 456	SB 380
33-38-107	enacted	Ch. 456	SB 380
33-38-108	enacted	Ch. 456	SB 380
35-1-1207	repealed	Ch. 71	HB 180
35-1-1309	amended	Ch. 71	HB 180
35-2-119	amended	Ch. 71	HB 180
35-2-609	amended	Ch. 214	SB 317
35-2-617	amended	Ch. 214	SB 317
35-2-722	amended	Ch. 214	SB 317
35-2-1109	amended	Ch. 71	HB 180
35-8-205	amended	Ch. 71	HB 180
35-8-206	amended	Ch. 71	HB 180
35-8-212	amended	Ch. 71	HB 180
35-10-113	amended	Ch. 71	HB 180
35-10-622	amended	Ch. 71	HB 180
35-10-627	amended	Ch. 71	HB 180
35-12-606	amended	Ch. 71	HB 180
35-12-1302	amended	Ch. 71	HB 180
35-12-1304	amended	Ch. 71	HB 180
37-1-101	amended	Ch. 467	HB 182
37-1-104	amended	Ch. 467	HB 182
37-1-105	amended	Ch. 467	HB 182
37-1-121	amended	Ch. 467	HB 182
37-1-130	amended	Ch. 467	HB 182
37-1-131	amended	Ch. 416	SB 481
	amended	Ch. 467	HB 182
37-1-134	amended	Ch. 467	HB 182
37-1-141	amended	Ch. 467	HB 182
37-1-302	amended	Ch. 467	HB 182

37-1-306	amended	Ch. 467	HB 182
37-1-307	amended	Ch. 467	HB 182
37-2-101	amended	Ch. 467	HB 182
37-2-107	enacted	Ch. 436	HB 254
37-2-315	enacted	Ch. 266	SB 479
37-3-103	amended	Ch. 126	HB 203
	amended	Ch. 519	HB 737
37-3-201	amended	Ch. 60	HB 138
	amended	Ch. 126	HB 203
37-3-203	amended	Ch. 467	HB 182
37-3-205	amended	Ch. 126	HB 203
37-3-211	amended	Ch. 467	HB 182
37-3-301	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-302	repealed	Ch. 126	HB 203
37-3-303	amended	Ch. 126	HB 203
37-3-304	amended	Ch. 126	HB 203
37-3-305	amended	Ch. 467	HB 182
37-3-306	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-307	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-309	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-311	amended	Ch. 467	HB 182
37-3-313	amended	Ch. 467	HB 182
37-3-315	amended	Ch. 126	HB 203
37-3-323	amended	Ch. 126	HB 203
37-3-341	amended	Ch. 467	HB 182
37-3-342	amended	Ch. 467	HB 182
37-3-343	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-344	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-345	amended	Ch. 126	HB 203
37-3-346	amended	Ch. 126	HB 203
	repealed	Ch. 467	HB 182
37-3-347	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-3-348	amended	Ch. 126	HB 203
37-3-349	amended	Ch. 126	HB 203
37-4-103	amended	Ch. 126	HB 203
37-4-201	amended	Ch. 60	HB 138
37-4-203	repealed	Ch. 467	HB 182
37-4-301	amended	Ch. 467	HB 182
37-4-303	repealed	Ch. 467	HB 182
37-4-307	amended	Ch. 467	HB 182
37-4-327	amended	Ch. 126	HB 203
37-4-402	amended	Ch. 467	HB 182
37-4-403	repealed	Ch. 467	HB 182
37-4-406	amended	Ch. 467	HB 182
37-4-408	amended	Ch. 126	HB 203
37-6-303	repealed	Ch. 467	HB 182
37-6-304	amended	Ch. 467	HB 182
37-7-104	amended	Ch. 467	HB 182
37-7-302	amended	Ch. 467	HB 182
37-7-303	repealed	Ch. 467	HB 182
37-7-321	amended	Ch. 467	HB 182
37-7-401	amended	Ch. 126	HB 203
37-7-605	amended	Ch. 467	HB 182
37-7-606	amended	Ch. 467	HB 182
37-8-101	amended	Ch. 126	HB 203
37-8-102	amended	Ch. 467	HB 182

MONTANA SESSION LAWS 2005

3254

37-8-103	amended	Ch. 519	HB 737
37-8-202	amended	Ch. 467	HB 182
37-8-204	amended	Ch. 467	HB 182
37-8-418	amended	Ch. 126	HB 203
37-8-431	repealed	Ch. 467	HB 182
37-9-304	amended	Ch. 467	HB 182
37-9-305	amended	Ch. 467	HB 182
37-10-202	amended	Ch. 126	HB 203
37-10-301	amended	Ch. 126	HB 203
37-10-302	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-10-304	amended	Ch. 126	HB 203
	amended	Ch. 130	SB 24
	amended	Ch. 467	HB 182
37-10-306	amended	Ch. 126	HB 203
37-10-307	repealed	Ch. 467	HB 182
37-10-313	amended	Ch. 126	HB 203
37-11-106	amended	Ch. 126	HB 203
37-11-201	amended	Ch. 467	HB 182
37-11-304	amended	Ch. 467	HB 182
37-11-305	repealed	Ch. 467	HB 182
37-11-308	repealed	Ch. 467	HB 182
37-11-309	repealed	Ch. 467	HB 182
37-12-201	amended	Ch. 467	HB 182
37-12-302	amended	Ch. 467	HB 182
37-12-307	repealed	Ch. 467	HB 182
37-13-302	amended	Ch. 467	HB 182
37-13-306	repealed	Ch. 467	HB 182
37-13-307	repealed	Ch. 467	HB 182
37-14-102	amended	Ch. 491	HB 457
37-14-301	amended	Ch. 126	HB 203
	amended	Ch. 491	HB 457
37-14-303	repealed	Ch. 467	HB 182
37-14-306	amended	Ch. 467	HB 182
37-14-309	repealed	Ch. 467	HB 182
37-14-310	repealed	Ch. 467	HB 182
37-14-313	amended	Ch. 491	HB 457
37-15-101	amended	Ch. 262	SB 451
37-15-102	amended	Ch. 262	SB 451
37-15-103	amended	Ch. 262	SB 451
37-15-303	amended	Ch. 262	SB 451
37-15-304	amended	Ch. 262	SB 451
	repealed	Ch. 467	HB 182
37-15-306	repealed	Ch. 467	HB 182
37-15-307	amended	Ch. 262	SB 451
37-15-308	repealed	Ch. 467	HB 182
37-15-312	repealed	Ch. 467	HB 182
37-15-313	amended	Ch. 262	SB 451
37-16-202	amended	Ch. 467	HB 182
37-16-403	repealed	Ch. 467	HB 182
37-16-404	repealed	Ch. 467	HB 182
37-16-405	amended	Ch. 467	HB 182
37-16-407	repealed	Ch. 467	HB 182
37-17-104	amended	Ch. 126	HB 203
37-17-302	amended	Ch. 467	HB 182
37-17-303	repealed	Ch. 467	HB 182
37-17-305	repealed	Ch. 467	HB 182
37-17-306	repealed	Ch. 467	HB 182
37-17-307	repealed	Ch. 467	HB 182
37-17-308	repealed	Ch. 467	HB 182
37-18-104	amended	Ch. 126	HB 203
37-18-202	amended	Ch. 467	HB 182
37-18-203	repealed	Ch. 467	HB 182

37-18-303	repealed	Ch. 467	HB 182
37-18-307	repealed	Ch. 467	HB 182
37-19-101	amended	Ch. 126	HB 203
37-19-306	repealed	Ch. 467	HB 182
37-19-401	amended	Ch. 467	HB 182
37-19-702	amended	Ch. 467	HB 182
37-19-807	amended	Ch. 467	HB 182
37-20-101	amended	Ch. 519	HB 737
37-20-103	amended	Ch. 519	HB 737
37-20-104	amended	Ch. 519	HB 737
37-20-201	repealed	Ch. 519	HB 737
37-20-202	amended	Ch. 519	HB 737
37-20-203	amended	Ch. 519	HB 737
37-20-301	amended	Ch. 467	HB 182
	amended	Ch. 519	HB 737
37-20-302	amended	Ch. 467	HB 182
	amended	Ch. 519	HB 737
37-20-303	amended	Ch. 519	HB 737
37-20-401	amended	Ch. 519	HB 737
37-20-402	amended	Ch. 519	HB 737
37-20-403	amended	Ch. 519	HB 737
37-20-404	amended	Ch. 519	HB 737
37-20-405	amended	Ch. 519	HB 737
37-20-406	amended	Ch. 519	HB 737
37-20-410	enacted	Ch. 519	HB 737
37-20-411	enacted	Ch. 519	HB 737
37-22-201	amended	Ch. 467	HB 182
37-22-301	amended	Ch. 467	HB 182
37-22-302	amended	Ch. 467	HB 182
37-22-303	repealed	Ch. 467	HB 182
37-22-304	repealed	Ch. 467	HB 182
37-23-101	amended	Ch. 467	HB 182
37-23-103	repealed	Ch. 467	HB 182
37-23-202	amended	Ch. 467	HB 182
37-23-203	amended	Ch. 467	HB 182
37-23-205	repealed	Ch. 467	HB 182
37-23-206	amended	Ch. 467	HB 182
37-24-202	amended	Ch. 467	HB 182
37-24-303	amended	Ch. 467	HB 182
37-24-304	repealed	Ch. 467	HB 182
37-24-308	repealed	Ch. 467	HB 182
37-24-310	amended	Ch. 467	HB 182
37-25-201	amended	Ch. 467	HB 182
37-25-307	repealed	Ch. 467	HB 182
37-26-201	amended	Ch. 467	HB 182
37-26-403	amended	Ch. 467	HB 182
37-27-105	amended	Ch. 467	HB 182
37-27-210	amended	Ch. 467	HB 182
37-28-104	amended	Ch. 467	HB 182
37-28-202	amended	Ch. 467	HB 182
37-28-203	repealed	Ch. 467	HB 182
37-29-304	repealed	Ch. 467	HB 182
37-29-305	repealed	Ch. 467	HB 182
37-29-306	amended	Ch. 467	HB 182
37-31-203	amended	Ch. 467	HB 182
37-31-302	amended	Ch. 194	HB 638
	amended	Ch. 467	HB 182
37-31-303	amended	Ch. 467	HB 182
37-31-304	amended	Ch. 467	HB 182
37-31-305	amended	Ch. 467	HB 182
37-31-308	amended	Ch. 467	HB 182
37-31-311	amended	Ch. 467	HB 182

37-31-312	amended	Ch. 194	HB 638
	amended	Ch. 467	HB 182
37-31-321	repealed	Ch. 467	HB 182
37-31-322	repealed	Ch. 467	HB 182
37-31-323	amended	Ch. 467	HB 182
37-34-201	amended	Ch. 467	HB 182
37-34-305	amended	Ch. 467	HB 182
37-35-103	amended	Ch. 467	HB 182
37-35-202	amended	Ch. 126	HB 203
37-35-203	repealed	Ch. 467	HB 182
37-40-302	amended	Ch. 467	HB 182
37-40-304	repealed	Ch. 467	HB 182
37-40-305	repealed	Ch. 467	HB 182
37-42-304	amended	Ch. 467	HB 182
37-42-308	amended	Ch. 467	HB 182
37-47-101	amended	Ch. 467	HB 182
37-47-201	amended	Ch. 467	HB 182
37-47-303	amended	Ch. 172	HB 281
37-47-304	amended	Ch. 467	HB 182
37-47-310	amended	Ch. 197	HB 702
37-47-311	amended	Ch. 197	HB 702
37-47-312	repealed	Ch. 467	HB 182
37-48-101	enacted	Ch. 294	HB 628
37-48-102	enacted	Ch. 294	HB 628
37-48-103	enacted	Ch. 294	HB 628
37-50-304	amended	Ch. 467	HB 182
37-50-308	repealed	Ch. 467	HB 182
37-50-317	repealed	Ch. 467	HB 182
37-50-323	enacted	Ch. 541	SB 278
37-50-324	enacted	Ch. 541	SB 278
37-51-204	amended	Ch. 467	HB 182
37-51-303	amended	Ch. 467	HB 182
37-51-305	amended	Ch. 467	HB 182
37-51-310	repealed	Ch. 467	HB 182
37-51-312	amended	Ch. 400	SB 289
37-51-313	amended	Ch. 389	SB 183
37-51-314	amended	Ch. 389	SB 183
37-51-321	amended	Ch. 389	SB 183
37-51-602	amended	Ch. 389	SB 183
37-51-603	amended	Ch. 467	HB 182
37-53-103	repealed	Ch. 467	HB 182
37-53-104	amended	Ch. 467	HB 182
37-54-210	repealed	Ch. 467	HB 182
37-54-211	repealed	Ch. 467	HB 182
37-54-311	repealed	Ch. 467	HB 182
37-60-202	amended	Ch. 126	HB 203
37-60-302	amended	Ch. 126	HB 203
37-60-303	amended	Ch. 126	HB 203
37-60-304	amended	Ch. 126	HB 203
	amended	Ch. 467	HB 182
37-60-312	repealed	Ch. 467	HB 182
37-61-211	amended	Ch. 420	SB 504
37-65-304	repealed	Ch. 467	HB 182
37-65-306	repealed	Ch. 467	HB 182
37-66-304	amended	Ch. 467	HB 182
37-66-307	repealed	Ch. 467	HB 182
37-67-303	amended	Ch. 467	HB 182
37-67-315	repealed	Ch. 467	HB 182
37-67-316	repealed	Ch. 467	HB 182
37-67-318	repealed	Ch. 467	HB 182
37-67-321	amended	Ch. 467	HB 182
37-68-201	amended	Ch. 467	HB 182
37-68-304	amended	Ch. 467	HB 182

37-68-305	amended	Ch. 467	HB 182
37-68-307	amended	Ch. 467	HB 182
37-68-310	amended	Ch. 467	HB 182
37-68-312	amended	Ch. 467	HB 182
37-69-304	amended	Ch. 467	HB 182
37-69-305	amended	Ch. 467	HB 182
37-69-306	amended	Ch. 467	HB 182
37-69-307	repealed	Ch. 467	HB 182
37-69-401	amended	Ch. 467	HB 182
37-72-101	amended	Ch. 542	SB 285
37-72-102	amended	Ch. 467	HB 182
37-72-202	amended	Ch. 467	HB 182
37-72-303	repealed	Ch. 467	HB 182
37-72-305	amended	Ch. 467	HB 182
37-72-306	repealed	Ch. 467	HB 182
37-73-101	enacted	Ch. 303	SB 412
37-73-102	enacted	Ch. 303	SB 412
37-73-201	enacted	Ch. 303	SB 412
37-73-202	enacted	Ch. 303	SB 412
37-73-203	enacted	Ch. 303	SB 412
37-73-204	enacted	Ch. 303	SB 412
37-73-208	enacted	Ch. 303	SB 412
37-73-212	enacted	Ch. 303	SB 412
37-73-216	enacted	Ch. 303	SB 412
37-73-220	enacted	Ch. 303	SB 412
37-73-221	enacted	Ch. 303	SB 412
37-73-225	enacted	Ch. 303	SB 412
37-73-226	enacted	Ch. 303	SB 412
37-73-227	enacted	Ch. 303	SB 412
37-76-109	amended	Ch. 467	HB 182
39-2-206	amended	Ch. 177	HB 409
39-2-207	amended	Ch. 177	HB 409
39-2-209	amended	Ch. 177	HB 409
39-3-213	amended	Ch. 14	HB 108
39-3-406	amended	Ch. 36	HB 226
39-6-101	amended	Ch. 538	SB 217
39-6-106	amended	Ch. 538	SB 217
39-6-108	enacted	Ch. 538	SB 217
39-8-102	amended	Ch. 260	SB 373
	amended	Ch. 448	SB 108
39-8-202	amended	Ch. 260	SB 373
39-8-204	amended	Ch. 260	SB 373
39-8-206	amended	Ch. 260	SB 373
39-8-207	amended	Ch. 260	SB 373
39-8-302	amended	Ch. 260	SB 373
39-9-201	amended	Ch. 133	SB 64
39-9-206	amended	Ch. 133	SB 64
39-11-103	amended	Ch. 26	HB 126
	amended	Ch. 169	HB 270
39-11-201	amended	Ch. 130	SB 24
	amended	Ch. 169	HB 270
39-11-202	amended	Ch. 26	HB 126
	amended	Ch. 169	HB 270
39-11-203	repealed	Ch. 169	HB 270
39-11-204	amended	Ch. 130	SB 24
	repealed	Ch. 169	HB 270
39-29-101	amended	Ch. 75	HB 198
39-30-103	amended	Ch. 75	HB 198
39-31-103	amended	Ch. 483	HB 418
39-31-501	enacted	Ch. 225	HB 483
39-31-502	enacted	Ch. 225	HB 483
39-31-503	enacted	Ch. 225	HB 483
39-31-504	enacted	Ch. 225	HB 483

MONTANA SESSION LAWS 2005

3258

39-31-505	enacted	Ch. 225	HB 483
39-51-201	amended	Ch. 448	SB 108
	amended	Ch. 466	HB 159
39-51-204	amended	Ch. 448	SB 108
	amended	Ch. 466	HB 159
39-51-301	amended	Ch. 466	HB 159
39-51-302	amended	Ch. 466	HB 159
39-51-409	amended	Ch. 466	HB 159
39-51-604	repealed	Ch. 122	SB 132
	repealed	Ch. 448	SB 108
39-51-1110	amended	Ch. 466	HB 159
39-51-1206	amended	Ch. 466	HB 159
39-51-1214	amended	Ch. 381	SB 118
39-51-1218	amended	Ch. 466	HB 159
39-51-1219	amended	Ch. 466	HB 159
39-51-1301	amended	Ch. 466	HB 159
39-51-1303	amended	Ch. 466	HB 159
39-51-2102	amended	Ch. 466	HB 159
39-51-2104	amended	Ch. 466	HB 159
39-51-2111	amended	Ch. 187	HB 567
39-51-2201	amended	Ch. 92	HB 400
39-51-2302	amended	Ch. 381	SB 118
39-51-2402	amended	Ch. 67	HB 158
	amended	Ch. 466	HB 159
39-71-105	amended	Ch. 103	SB 8
	amended	Ch. 416	SB 481
	amended	Ch. 448	SB 108
39-71-106	amended	Ch. 416	SB 481
39-71-107	amended	Ch. 103	SB 8
	amended	Ch. 140	SB 188
	amended	Ch. 416	SB 481
39-71-116	amended	Ch. 26	HB 126
39-71-116	amended	Ch. 140	SB 188
	amended	Ch. 416	SB 481
	amended	Ch. 519	HB 737
39-71-117	amended	Ch. 448	SB 108
39-71-118	amended	Ch. 26	HB 126
39-71-120	repealed	Ch. 448	SB 108
39-71-124	enacted	Ch. 416	SB 481
39-71-201	amended	Ch. 103	SB 8
	amended	Ch. 133	SB 64
	amended	Ch. 416	SB 481
39-71-204	amended	Ch. 103	SB 8
39-71-206	amended	Ch. 416	SB 481
39-71-211	amended	Ch. 416	SB 481
39-71-221	repealed	Ch. 26	HB 126
39-71-222	repealed	Ch. 26	HB 126
39-71-225	amended	Ch. 140	SB 188
39-71-226	renumbered 39-71-2370	Ch. 26	HB 126
39-71-302	repealed	Ch. 103	SB 8
39-71-303	repealed	Ch. 103	SB 8
39-71-306	amended	Ch. 69	HB 161
39-71-307	amended	Ch. 103	SB 8
	amended	Ch. 140	SB 188
39-71-308	repealed	Ch. 103	SB 8
39-71-315	amended	Ch. 69	HB 161
	amended	Ch. 416	SB 481
39-71-316	amended	Ch. 416	SB 481
39-71-317	amended	Ch. 416	SB 481
39-71-318	repealed	Ch. 103	SB 8
39-71-401	amended	Ch. 26	HB 126
	amended	Ch. 133	SB 64
	amended	Ch. 448	SB 108

39-71-403	amended	Ch. 416	SB 481
39-71-407	amended	Ch. 103	SB 8
	amended	Ch. 416	SB 481
39-71-409	amended	Ch. 448	SB 108
39-71-415	amended	Ch. 448	SB 108
39-71-416	repealed	Ch. 26	HB 126
	amended (Void. Sec. 40, Ch. 416)	Ch. 416	SB 481
39-71-417	enacted	Ch. 448	SB 108
39-71-418	enacted	Ch. 448	SB 108
39-71-419	enacted	Ch. 448	SB 108
39-71-426	repealed	Ch. 26	HB 126
39-71-427	repealed	Ch. 26	HB 126
39-71-428	repealed	Ch. 26	HB 126
39-71-504	amended	Ch. 69	HB 161
39-71-525	amended	Ch. 416	SB 481
39-71-601	amended	Ch. 416	SB 481
39-71-603	amended	Ch. 416	SB 481
39-71-605	amended	Ch. 141	SB 189
39-71-608	amended	Ch. 103	SB 8
39-71-612	amended	Ch. 416	SB 481
39-71-703	amended	Ch. 103	SB 8
39-71-704	amended	Ch. 69	HB 161
	amended	Ch. 345	HB 772
39-71-711	amended	Ch. 141	SB 189
39-71-713	enacted	Ch. 416	SB 481
39-71-714	enacted	Ch. 416	SB 481
39-71-715	enacted	Ch. 416	SB 481
39-71-716	enacted	Ch. 416	SB 481
39-71-741	amended	Ch. 103	SB 8
39-71-743	amended	Ch. 31	HB 175
	amended	Ch. 103	SB 8
	amended	Ch. 416	SB 481
39-71-801	repealed	Ch. 26	HB 126
39-71-802	repealed	Ch. 26	HB 126
39-71-803	repealed	Ch. 26	HB 126
39-71-804	repealed	Ch. 26	HB 126
39-71-805	repealed	Ch. 26	HB 126
39-71-806	repealed	Ch. 26	HB 126
39-71-807	repealed	Ch. 26	HB 126
39-71-808	repealed	Ch. 26	HB 126
39-71-809	repealed	Ch. 26	HB 126
39-71-810	repealed	Ch. 26	HB 126
39-71-811	repealed	Ch. 26	HB 126
39-71-812	repealed	Ch. 26	HB 126
39-71-813	repealed	Ch. 26	HB 126
39-71-905	amended	Ch. 257	SB 368
39-71-906	repealed	Ch. 257	SB 368
39-71-915	amended	Ch. 69	HB 161
	amended	Ch. 416	SB 481
39-71-1006	amended	Ch. 103	SB 8
39-71-1011	amended	Ch. 130	SB 24
39-71-1014	amended	Ch. 130	SB 24
39-71-1105	amended	Ch. 416	SB 481
39-71-2105	amended	Ch. 69	HB 161
39-71-2108	amended	Ch. 69	HB 161
39-71-2203	amended	Ch. 69	HB 161
39-71-2204	amended	Ch. 69	HB 161
39-71-2205	amended	Ch. 69	HB 161
39-71-2208	enacted	Ch. 69	HB 161
39-71-2211	amended	Ch. 26	HB 126
39-71-2312	amended	Ch. 26	HB 126
39-71-2316	amended	Ch. 130	SB 24
39-71-2336	amended	Ch. 69	HB 161

MONTANA SESSION LAWS 2005

3260

39-71-2337	amended	Ch. 69	HB 161
39-71-2339	amended	Ch. 69	HB 161
39-71-2370	formerly 39-71-226	Ch. 26	HB 126
39-71-2401	amended	Ch. 416	SB 481
39-71-2406	amended	Ch. 416	SB 481
39-71-2408	amended	Ch. 416	SB 481
39-71-2410	amended	Ch. 39	HB 381
39-71-2411	amended	Ch. 39	HB 381
	amended	Ch. 416	SB 481
39-71-4001	enacted	Ch. 345	HB 772
39-71-4002	enacted	Ch. 345	HB 772
39-71-4003	enacted	Ch. 345	HB 772
39-71-4004	enacted	Ch. 345	HB 772
39-72-101	repealed	Ch. 416	SB 481
39-72-102	amended	Ch. 140	SB 188
	repealed	Ch. 416	SB 481
	amended	Ch. 448	SB 108
39-72-103	repealed	Ch. 416	SB 481
39-72-201	repealed	Ch. 416	SB 481
39-72-202	repealed	Ch. 416	SB 481
39-72-203	repealed	Ch. 416	SB 481
39-72-204	repealed	Ch. 416	SB 481
39-72-206	repealed	Ch. 416	SB 481
39-72-301	repealed	Ch. 416	SB 481
39-72-302	repealed	Ch. 416	SB 481
39-72-303	repealed	Ch. 416	SB 481
39-72-305	repealed	Ch. 416	SB 481
39-72-310	repealed	Ch. 416	SB 481
39-72-401	repealed	Ch. 416	SB 481
39-72-402	repealed	Ch. 416	SB 481
39-72-403	repealed	Ch. 416	SB 481
39-72-404	repealed	Ch. 416	SB 481
39-72-405	repealed	Ch. 416	SB 481
39-72-408	repealed	Ch. 416	SB 481
39-72-509	repealed	Ch. 416	SB 481
39-72-601	repealed	Ch. 416	SB 481
39-72-602	repealed	Ch. 416	SB 481
39-72-606	repealed	Ch. 416	SB 481
39-72-607	repealed	Ch. 416	SB 481
39-72-608	repealed	Ch. 416	SB 481
39-72-701	repealed	Ch. 416	SB 481
39-72-703	repealed	Ch. 416	SB 481
39-72-704	repealed	Ch. 416	SB 481
39-72-705	repealed	Ch. 416	SB 481
39-72-706	repealed	Ch. 416	SB 481
39-72-707	repealed	Ch. 416	SB 481
39-72-708	repealed	Ch. 416	SB 481
39-72-709	repealed	Ch. 416	SB 481
39-72-711	repealed	Ch. 416	SB 481
39-72-712	repealed	Ch. 416	SB 481
39-72-714	repealed	Ch. 416	SB 481
39-73-101	amended	Ch. 474	HB 327
39-73-103	amended	Ch. 474	HB 327
39-73-104	amended	Ch. 416	SB 481
	amended	Ch. 474	HB 327
39-73-107	amended	Ch. 416	SB 481
	amended	Ch. 474	HB 327
39-73-109	amended	Ch. 474	HB 327
40-1-202	amended (Void. Sec. 10, Ch. 493)	Ch. 114	SB 67
	amended	Ch. 493	HB 476
40-1-311	amended (Void. Sec. 11, Ch. 493)	Ch. 114	SB 67
	amended	Ch. 493	HB 476
40-4-204	amended	Ch. 564	SB 139

40-5-201	amended	Ch. 21	HB 80
40-5-202	amended	Ch. 21	HB 80
40-5-203	amended	Ch. 21	HB 80
40-5-206	amended	Ch. 21	HB 80
	amended	Ch. 431	HB 216
40-5-208	amended	Ch. 431	HB 216
40-5-225	amended	Ch. 431	HB 216
40-5-226	amended	Ch. 21	HB 80
	amended	Ch. 431	HB 216
	amended	Ch. 564	SB 139
40-5-234	amended	Ch. 564	SB 139
40-5-236	amended	Ch. 449	SB 146
40-5-247	amended	Ch. 431	HB 216
40-5-248	amended	Ch. 564	SB 139
40-5-263	amended	Ch. 21	HB 80
40-5-271	amended	Ch. 21	HB 80
	amended	Ch. 564	SB 139
40-5-272	amended	Ch. 564	SB 139
40-5-273	amended	Ch. 564	SB 139
40-5-276	repealed	Ch. 564	SB 139
40-5-277	amended	Ch. 564	SB 139
40-5-403	amended	Ch. 21	HB 80
40-5-412	amended	Ch. 431	HB 216
40-5-431	amended	Ch. 21	HB 80
40-5-432	amended	Ch. 21	HB 80
40-5-433	amended	Ch. 21	HB 80
40-5-434	amended	Ch. 21	HB 80
40-5-601	amended	Ch. 21	HB 80
40-5-701	amended	Ch. 21	HB 80
40-5-810	amended	Ch. 431	HB 216
40-5-812	amended	Ch. 431	HB 216
40-5-813	amended	Ch. 431	HB 216
40-5-901	amended	Ch. 21	HB 80
40-5-906	amended	Ch. 21	HB 80
	amended	Ch. 130	SB 24
40-5-909	amended	Ch. 21	HB 80
40-5-923	amended	Ch. 21	HB 80
40-6-116	amended	Ch. 564	SB 139
40-6-119	amended	Ch. 449	SB 146
40-6-402	amended	Ch. 36	HB 226
40-6-405	amended	Ch. 102	SB 6
	amended (Void. Sec. 2, Ch. 102)	Ch. 130	SB 24
40-15-115	enacted	Ch. 83	HB 285
40-15-116	enacted	Ch. 83	HB 285
40-15-117	enacted	Ch. 83	HB 285
40-15-118	enacted	Ch. 83	HB 285
40-15-119	enacted	Ch. 83	HB 285
40-15-120	enacted	Ch. 83	HB 285
40-15-121	enacted	Ch. 83	HB 285
41-1-401	amended	Ch. 519	HB 737
41-3-102	amended	Ch. 349	SB 86
41-3-112	amended	Ch. 382	SB 119
41-3-115	amended	Ch. 382	SB 119
41-3-201	amended	Ch. 382	SB 119
41-3-202	amended	Ch. 382	SB 119
41-3-205	amended	Ch. 349	SB 86
	amended	Ch. 449	SB 146
41-3-301	amended	Ch. 422	SB 308
41-3-302	amended	Ch. 130	SB 24
41-3-422	amended	Ch. 118	SB 94
	amended	Ch. 449	SB 146
41-3-423	amended	Ch. 449	SB 146
41-3-425	enacted	Ch. 449	SB 146

MONTANA SESSION LAWS 2005

3262

41-3-427	amended	Ch. 422	SB 308
41-3-428	amended	Ch. 118	SB 94
41-3-429	amended	Ch. 118	SB 94
41-3-432	amended	Ch. 349	SB 86
	amended	Ch. 449	SB 146
41-3-437	amended	Ch. 130	SB 24
	amended	Ch. 349	SB 86
41-3-438	amended	Ch. 178	HB 420
	amended	Ch. 382	SB 119
41-3-439	amended	Ch. 178	HB 420
41-3-443	amended	Ch. 382	SB 119
41-3-445	amended	Ch. 130	SB 24
	amended	Ch. 178	HB 420
	amended	Ch. 382	SB 119
41-3-607	amended	Ch. 449	SB 146
41-3-609	amended	Ch. 349	SB 86
41-3-1010	amended	Ch. 382	SB 119
	amended	Ch. 449	SB 146
41-3-1012	amended	Ch. 449	SB 146
41-5-102	amended	Ch. 512	HB 696
41-5-103	amended	Ch. 423	SB 426
41-5-111	amended	Ch. 449	SB 146
41-5-130	amended	Ch. 482	HB 414
41-5-206	amended	Ch. 277	HB 326
41-5-215	amended	Ch. 423	SB 426
41-5-216	amended	Ch. 423	SB 426
41-5-220	enacted	Ch. 423	SB 426
41-5-221	enacted	Ch. 423	SB 426
41-5-1413	amended	Ch. 449	SB 146
41-5-1524	amended	Ch. 423	SB 426
41-5-2011	enacted	Ch. 482	HB 414
41-5-2510	amended	Ch. 423	SB 426
42-2-405	amended	Ch. 449	SB 146
42-6-102	amended	Ch. 382	SB 119
44-1-504	enacted	Ch. 421	HB 35
44-1-515	amended	Ch. 329	HB 213
44-1-518	amended	Ch. 329	HB 213
44-1-1005	amended	Ch. 366	SB 459
	amended	Ch. 428	HB 192
44-1-1102	amended	Ch. 130	SB 24
44-2-117	amended	Ch. 243	SB 282
44-2-401	amended	Ch. 36	HB 226
44-4-301	amended	Ch. 366	SB 459
44-4-302	amended	Ch. 366	SB 459
44-4-310	enacted	Ch. 493	HB 476
44-4-311	enacted	Ch. 493	HB 476
44-4-312	enacted	Ch. 493	HB 476
44-4-313	enacted	Ch. 493	HB 476
44-4-1001	enacted	Ch. 572	SB 287
44-4-1002	enacted	Ch. 572	SB 287
44-4-1003	enacted	Ch. 572	SB 287
44-4-1004	enacted	Ch. 572	SB 287
44-4-1005	enacted	Ch. 572	SB 287
44-5-506	amended	Ch. 36	HB 226
44-6-101	amended	Ch. 155	HB 113
45-2-101	amended	Ch. 364	SB 381
45-5-106	enacted	Ch. 426	HB 46
45-5-205	amended	Ch. 542	SB 285
45-5-209	enacted	Ch. 411	SB 452
45-5-214	amended	Ch. 292	HB 363
45-5-623	amended	Ch. 386	SB 137
45-5-624	amended	Ch. 183	HB 520
	amended	Ch. 546	SB 407

45-5-625	amended	Ch. 364	SB 381
45-6-301	amended	Ch. 137	SB 166
	amended	Ch. 416	SB 481
	amended	Ch. 595	HB 667
45-6-313	amended	Ch. 185	HB 556
45-6-315	amended	Ch. 575	SB 401
45-6-341	enacted	Ch. 276	HB 307
45-7-210	amended	Ch. 312	HB 40
45-8-108	amended	Ch. 36	HB 226
45-8-110	enacted	Ch. 331	HB 324
45-8-213	amended	Ch. 435	HB 250
45-8-341	repealed	Ch. 45	HB 39
45-8-342	repealed	Ch. 45	HB 39
45-9-102	amended	Ch. 277	HB 326
45-9-107	amended	Ch. 137	SB 166
45-9-131	amended	Ch. 137	SB 166
45-9-202	amended	Ch. 473	HB 288
46-1-1101	enacted	Ch. 282	HB 721
46-1-1102	enacted	Ch. 282	HB 721
46-1-1103	enacted	Ch. 282	HB 721
46-1-1104	enacted	Ch. 282	HB 721
46-1-1110	enacted	Ch. 282	HB 721
46-1-1111	enacted	Ch. 282	HB 721
46-1-1112	enacted	Ch. 282	HB 721
46-1-1113	enacted	Ch. 282	HB 721
46-1-1114	enacted	Ch. 282	HB 721
46-4-114	amended	Ch. 519	HB 737
46-4-304	amended	Ch. 449	SB 146
46-5-228	amended	Ch. 153	HB 100
46-6-311	amended	Ch. 411	SB 452
46-6-420	enacted	Ch. 242	SB 264
46-8-101	amended	Ch. 449	SB 146
46-8-104	amended	Ch. 449	SB 146
46-8-111	repealed 7/1/2006	Ch. 449	SB 146
46-8-113	amended	Ch. 449	SB 146
46-8-114	amended	Ch. 449	SB 146
46-8-115	amended	Ch. 449	SB 146
46-8-201	repealed 7/1/2006	Ch. 449	SB 146
46-8-202	repealed 7/1/2006	Ch. 449	SB 146
46-8-210	repealed 7/1/2006	Ch. 449	SB 146
46-8-211	repealed 7/1/2006	Ch. 449	SB 146
46-8-212	repealed 7/1/2006	Ch. 449	SB 146
46-8-213	repealed 7/1/2006	Ch. 449	SB 146
46-9-108	amended	Ch. 411	SB 452
46-9-511	amended	Ch. 35	HB 205
46-12-201	amended	Ch. 222	HB 280
46-12-210	amended	Ch. 449	SB 146
46-12-211	amended	Ch. 222	HB 280
46-13-110	amended	Ch. 557	HB 367
46-14-202	amended	Ch. 449	SB 146
46-14-221	amended	Ch. 130	SB 24
	amended	Ch. 449	SB 146
46-14-222	amended	Ch. 130	SB 24
46-15-115	amended	Ch. 449	SB 146
46-15-116	amended	Ch. 449	SB 146
46-15-411	amended	Ch. 504	HB 577
46-16-105	amended	Ch. 222	HB 280
46-16-123	amended	Ch. 222	HB 280
46-17-203	amended	Ch. 449	SB 146
46-17-311	amended	Ch. 557	HB 367
46-17-402	amended	Ch. 232	SB 38
46-18-101	amended	Ch. 449	SB 146
46-18-102	amended	Ch. 222	HB 280

MONTANA SESSION LAWS 2005

3264

46-18-111	amended	Ch. 517	HB 726
46-18-115	amended	Ch. 222	HB 280
46-18-201	amended	Ch. 449	SB 146
	amended	Ch. 517	HB 726
46-18-206	enacted	Ch. 360	SB 207
46-18-225	amended	Ch. 517	HB 726
46-18-235	amended	Ch. 232	SB 38
46-18-236	amended	Ch. 361	SB 208
46-18-403	amended	Ch. 13	HB 66
46-19-202	amended	Ch. 130	SB 24
46-21-201	amended	Ch. 449	SB 146
46-23-502	amended	Ch. 313	HB 49
46-23-504	amended	Ch. 313	HB 49
46-23-505	amended	Ch. 313	HB 49
46-23-506	amended	Ch. 313	HB 49
46-23-509	amended	Ch. 313	HB 49
46-23-1010	enacted	Ch. 360	SB 207
46-23-1015	amended	Ch. 517	HB 726
46-23-1031	amended	Ch. 360	SB 207
	amended	Ch. 473	HB 288
46-24-106	amended	Ch. 33	HB 190
46-24-220	enacted	Ch. 55	HB 110
47-1-101	enacted	Ch. 449	SB 146
47-1-102	enacted	Ch. 449	SB 146
47-1-103	enacted	Ch. 449	SB 146
47-1-104	enacted	Ch. 449	SB 146
47-1-105	enacted	Ch. 449	SB 146
47-1-110	enacted	Ch. 449	SB 146
47-1-111	enacted	Ch. 449	SB 146
47-1-201	enacted	Ch. 449	SB 146
47-1-202	enacted	Ch. 449	SB 146
47-1-205	enacted	Ch. 449	SB 146
47-1-210	enacted	Ch. 449	SB 146
47-1-215	enacted	Ch. 449	SB 146
47-1-216	enacted	Ch. 449	SB 146
49-4-301	amended	Ch. 507	HB 645
	amended	Ch. 596	HB 671
49-4-302	amended	Ch. 596	HB 671
49-4-303	amended	Ch. 596	HB 671
49-4-304	amended	Ch. 596	HB 671
49-4-305	amended	Ch. 596	HB 671
49-4-311	repealed	Ch. 233	SB 39
49-4-312	repealed	Ch. 233	SB 39
50-1-111	enacted	Ch. 601	HB 740
50-1-202	amended	Ch. 386	SB 137
50-1-211	enacted	Ch. 404	SB 328
50-2-111	amended	Ch. 453	SB 301
50-2-114	repealed	Ch. 453	SB 301
50-2-116	amended	Ch. 386	SB 137
50-2-130	amended	Ch. 386	SB 137
50-4-701	enacted	Ch. 214	SB 317
50-4-702	enacted	Ch. 214	SB 317
50-4-703	enacted	Ch. 214	SB 317
50-4-704	enacted	Ch. 214	SB 317
50-4-707	enacted	Ch. 214	SB 317
50-4-708	enacted	Ch. 214	SB 317
50-4-709	enacted	Ch. 214	SB 317
50-4-710	enacted	Ch. 214	SB 317
50-4-711	enacted	Ch. 214	SB 317
50-4-712	enacted	Ch. 214	SB 317
50-4-713	enacted	Ch. 214	SB 317
50-4-714	enacted	Ch. 214	SB 317
50-4-715	enacted	Ch. 214	SB 317

50-4-716.	enacted.	Ch. 214	SB 317
50-4-717.	enacted.	Ch. 214	SB 317
50-4-718.	enacted.	Ch. 214	SB 317
50-4-719.	enacted.	Ch. 214	SB 317
50-4-720.	enacted.	Ch. 214	SB 317
50-5-101	amended.	Ch. 365	SB 440
	amended.	Ch. 519	HB 737
50-5-216	amended.	Ch. 519	HB 737
50-5-233	amended.	Ch. 7	SB 60
50-5-245.	enacted.	Ch. 365	SB 440
50-9-501.	enacted.	Ch. 447	HB 742
50-9-502.	enacted.	Ch. 447	HB 742
50-9-503.	enacted.	Ch. 447	HB 742
50-9-504.	enacted.	Ch. 447	HB 742
50-9-505.	enacted.	Ch. 447	HB 742
50-15-109	amended.	Ch. 149	HB 32
50-15-223	amended.	Ch. 149	HB 32
50-15-301	amended.	Ch. 114	SB 67
50-15-304	amended.	Ch. 149	HB 32
50-16-201	amended.	Ch. 467	HB 182
	amended.	Ch. 519	HB 737
50-19-101	amended.	Ch. 519	HB 737
50-19-211	amended.	Ch. 396	SB 275
50-19-212.	enacted.	Ch. 396	SB 275
50-20-101	amended.	Ch. 130	SB 24
50-20-109	amended.	Ch. 519	HB 737
50-20-212	amended.	Ch. 449	SB 146
50-32-501.	enacted.	Ch. 572	SB 287
50-32-502.	enacted.	Ch. 572	SB 287
50-39-105	repealed.	Ch. 467	HB 182
50-39-106.	repealed.	Ch. 467	HB 182
50-40-102	amended.	Ch. 268	HB 643
50-40-103	amended.	Ch. 268	HB 643
50-40-104	amended.	Ch. 268	HB 643
50-40-105	repealed.	Ch. 268	HB 643
50-40-106.	repealed.	Ch. 268	HB 643
50-40-107	repealed.	Ch. 268	HB 643
50-40-108	amended.	Ch. 268	HB 643
50-40-109	repealed.	Ch. 268	HB 643
50-40-110.	enacted.	Ch. 268	HB 643
50-40-115.	enacted.	Ch. 268	HB 643
50-40-120.	enacted.	Ch. 268	HB 643
50-40-201	amended.	Ch. 268	HB 643
50-40-202.	repealed.	Ch. 268	HB 643
50-40-203.	repealed.	Ch. 268	HB 643
50-40-207.	repealed.	Ch. 268	HB 643
50-44-103.	enacted.	Ch. 535	SB 85
50-48-101.	enacted.	Ch. 386	SB 137
50-48-102.	enacted.	Ch. 386	SB 137
50-48-103.	enacted.	Ch. 386	SB 137
50-48-106.	enacted.	Ch. 386	SB 137
50-48-107.	enacted.	Ch. 386	SB 137
50-48-108.	enacted.	Ch. 386	SB 137
50-48-109.	enacted.	Ch. 386	SB 137
50-48-110.	enacted.	Ch. 386	SB 137
50-48-201.	enacted.	Ch. 386	SB 137
50-48-202.	enacted.	Ch. 386	SB 137
50-48-203.	enacted.	Ch. 386	SB 137
50-48-204.	enacted.	Ch. 386	SB 137
50-48-205.	enacted.	Ch. 386	SB 137
50-48-206.	enacted.	Ch. 386	SB 137
50-48-209.	enacted.	Ch. 386	SB 137
50-50-207	amended.	Ch. 34	HB 195

MONTANA SESSION LAWS 2005

3266

50-60-103	amended	Ch. 68	HB 160
50-60-105	amended	Ch. 68	HB 160
50-60-109	amended	Ch. 68	HB 160
50-60-110	amended	Ch. 68	HB 160
50-60-115	amended	Ch. 303	SB 412
50-60-203	amended	Ch. 130	SB 24
50-60-701	repealed	Ch. 303	SB 412
50-60-702	repealed	Ch. 303	SB 412
50-60-703	repealed	Ch. 303	SB 412
50-60-704	enacted	Ch. 303	SB 412
50-60-705	enacted	Ch. 303	SB 412
50-60-706	enacted	Ch. 303	SB 412
50-60-709	enacted	Ch. 303	SB 412
50-60-711	enacted	Ch. 303	SB 412
50-60-715	enacted	Ch. 303	SB 412
50-60-716	enacted	Ch. 303	SB 412
50-60-720	enacted	Ch. 303	SB 412
50-74-219	amended	Ch. 68	HB 160
50-74-309	repealed	Ch. 467	HB 182
50-74-312	amended	Ch. 467	HB 182
50-74-313	repealed	Ch. 467	HB 182
50-76-103	amended	Ch. 93	HB 401
50-76-105	repealed	Ch. 467	HB 182
50-76-109	amended	Ch. 93	HB 401
50-76-110	amended	Ch. 93	HB 401
50-76-112	amended	Ch. 93	HB 401
50-76-113	enacted	Ch. 93	HB 401
50-76-114	enacted	Ch. 93	HB 401
52-2-304	amended	Ch. 130	SB 24
	amended	Ch. 200	SB 42
52-2-736	enacted	Ch. 270	HB 68
52-3-825	amended	Ch. 429	HB 197
52-5-108	amended	Ch. 519	HB 737
53-1-203	amended	Ch. 87	HB 313
	amended	Ch. 277	HB 326
	amended	Ch. 517	HB 726
53-1-409	amended	Ch. 383	SB 121
53-1-501	amended	Ch. 517	HB 726
53-1-701	enacted	Ch. 548	SB 428
53-1-702	enacted	Ch. 548	SB 428
53-1-703	enacted	Ch. 548	SB 428
53-1-704	enacted	Ch. 548	SB 428
53-1-705	enacted	Ch. 548	SB 428
53-1-710	enacted	Ch. 548	SB 428
53-1-711	enacted	Ch. 548	SB 428
53-1-712	enacted	Ch. 548	SB 428
53-1-713	enacted	Ch. 548	SB 428
53-1-714	enacted	Ch. 548	SB 428
53-2-101	amended	Ch. 350	SB 110
53-2-215	enacted	Ch. 350	SB 110
53-2-216	enacted	Ch. 595	HB 667
53-2-217	enacted	Ch. 595	HB 667
53-2-608	amended	Ch. 94	HB 437
53-4-201	amended	Ch. 184	HB 555
53-4-209	enacted	Ch. 184	HB 555
53-4-212	amended	Ch. 184	HB 555
	amended	Ch. 230	SB 29
53-4-231	amended	Ch. 230	SB 29
53-4-260	enacted	Ch. 558	HB 529
53-4-601	amended	Ch. 350	SB 110
53-4-1006	repealed	Ch. 152	HB 88
53-4-1007	amended	Ch. 565	SB 154
53-4-1012	enacted	Ch. 565	SB 154

53-6-101	amended	Ch. 353	SB 127
	amended	Ch. 519	HB 737
	amended	Ch. 530	SB 41
53-6-109	amended	Ch. 514	HB 704
53-6-110	amended	Ch. 380	SB 93
53-6-113	amended	Ch. 502	HB 552
53-6-146	enacted	Ch. 128	HB 452
53-6-401	amended	Ch. 72	HB 183
	amended	Ch. 353	SB 127
53-6-402	amended	Ch. 72	HB 183
	amended	Ch. 353	SB 127
53-6-703	amended	Ch. 130	SB 24
53-6-803	amended	Ch. 406	SB 358
53-6-1001	amended	Ch. 287	SB 324
53-6-1002	amended	Ch. 287	SB 324
53-6-1003	amended	Ch. 287	SB 324
53-6-1004	enacted	Ch. 287	SB 324
53-6-1005	enacted	Ch. 287	SB 324
53-6-1006	enacted	Ch. 287	SB 324
53-6-1010	amended	Ch. 287	SB 324
53-6-1013	amended	Ch. 287	SB 324
53-6-1020	enacted	Ch. 287	SB 324
53-6-1201	amended	Ch. 287	SB 324
	amended	Ch. 511	HB 687
	amended	Ch. 595	HB 667
53-7-109	amended	Ch. 130	SB 24
53-9-104	amended	Ch. 449	SB 146
53-9-129	amended	Ch. 431	HB 216
53-10-201	enacted	Ch. 520	HB 738
53-10-202	enacted	Ch. 520	HB 738
53-10-203	enacted	Ch. 520	HB 738
53-10-204	enacted	Ch. 520	HB 738
53-10-211	enacted	Ch. 520	HB 738
53-10-212	enacted	Ch. 520	HB 738
53-20-102	amended	Ch. 27	HB 127
53-20-125	amended	Ch. 449	SB 146
53-20-202	amended	Ch. 78	HB 215
53-20-203	amended	Ch. 78	HB 215
53-20-205	amended	Ch. 78	HB 215
53-20-206	repealed	Ch. 78	HB 215
53-20-220	enacted	Ch. 304	SB 433
53-21-102	amended	Ch. 81	HB 255
53-21-112	amended	Ch. 449	SB 146
53-21-116	amended	Ch. 449	SB 146
53-21-122	amended	Ch. 449	SB 146
53-21-126	amended	Ch. 81	HB 255
53-21-132	amended	Ch. 480	HB 395
53-21-139	amended	Ch. 530	SB 41
53-21-1001	amended	Ch. 553	SB 499
53-21-1002	amended	Ch. 553	SB 499
53-21-1006	amended	Ch. 200	SB 42
	amended	Ch. 553	SB 499
53-21-1007	amended	Ch. 553	SB 499
53-21-1010	amended	Ch. 453	SB 301
53-21-1013	enacted	Ch. 553	SB 499
53-24-107	amended	Ch. 442	HB 349
53-24-302	amended	Ch. 449	SB 146
53-24-303	amended	Ch. 442	HB 349
53-30-110	amended	Ch. 449	SB 146
53-30-507	amended	Ch. 551	SB 477
60-1-207	amended	Ch. 74	HB 187
60-1-211	enacted	Ch. 216	HB 688
60-1-212	enacted	Ch. 388	SB 164

60-2-107	amended	Ch. 168	HB 269
	amended	Ch. 226	HB 492
60-2-127	amended	Ch. 336	HB 451
60-2-136	amended	Ch. 113	SB 56
60-2-140	enacted	Ch. 362	SB 304
60-2-220	amended	Ch. 497	HB 530
60-3-201	amended	Ch. 472	HB 266
60-4-201	amended	Ch. 226	HB 492
60-4-202	amended	Ch. 226	HB 492
60-4-203	amended	Ch. 226	HB 492
60-4-209	amended	Ch. 226	HB 492
60-4-213	enacted	Ch. 226	HB 492
60-4-214	enacted	Ch. 226	HB 492
60-4-215	enacted	Ch. 226	HB 492
60-4-216	enacted	Ch. 226	HB 492
60-4-217	enacted	Ch. 226	HB 492
60-4-218	enacted	Ch. 226	HB 492
60-11-111	amended	Ch. 496	HB 512
60-11-113	enacted	Ch. 602	HB 757
60-11-114	enacted	Ch. 602	HB 757
60-11-115	enacted	Ch. 602	HB 757
60-11-116	enacted	Ch. 602	HB 757
60-11-117	enacted	Ch. 602	HB 757
60-11-118	enacted	Ch. 602	HB 757
60-11-119	enacted	Ch. 602	HB 757
60-11-120	amended	Ch. 496	HB 512
	amended	Ch. 602	HB 757
61-1-101	amended	Ch. 233	SB 39
	amended	Ch. 241	SB 244
	amended	Ch. 428	HB 192
(10), (23), (38), (60), (64)	enacted	Ch. 458	SB 507
	amended	Ch. 468	HB 186
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
(1), (2), (9), (50)	enacted	Ch. 596	HB 671
61-1-102	amended	Ch. 233	SB 39
	amended	Ch. 468	HB 186
	repealed 1/1/2006	Ch. 542	SB 285
61-1-103	amended	Ch. 233	SB 39
	repealed 1/1/2006	Ch. 542	SB 285
61-1-104	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-105	amended	Ch. 468	HB 186
	repealed 1/1/2006	Ch. 542	SB 285
61-1-106	amended	Ch. 468	HB 186
	repealed 1/1/2006	Ch. 542	SB 285
61-1-107	repealed 1/1/2006	Ch. 542	SB 285
61-1-108	repealed 1/1/2006	Ch. 542	SB 285
61-1-109	repealed 1/1/2006	Ch. 542	SB 285
61-1-110	repealed 1/1/2006	Ch. 542	SB 285
61-1-111	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-112	repealed 1/1/2006	Ch. 542	SB 285
61-1-113	repealed 1/1/2006	Ch. 542	SB 285
61-1-114	repealed 1/1/2006	Ch. 542	SB 285
61-1-115	repealed 1/1/2006	Ch. 542	SB 285
61-1-116	repealed 1/1/2006	Ch. 542	SB 285
61-1-117	repealed 1/1/2006	Ch. 542	SB 285
61-1-118	repealed 1/1/2006	Ch. 542	SB 285
61-1-119	repealed 1/1/2006	Ch. 542	SB 285
61-1-120	repealed 1/1/2006	Ch. 542	SB 285
61-1-121	repealed 1/1/2006	Ch. 542	SB 285
61-1-123	repealed 1/1/2006	Ch. 542	SB 285

61-1-124	repealed 1/1/2006	Ch. 542	SB 285
61-1-125	repealed 1/1/2006	Ch. 542	SB 285
61-1-126	repealed 1/1/2006	Ch. 542	SB 285
61-1-127	repealed 1/1/2006	Ch. 542	SB 285
61-1-128	repealed 1/1/2006	Ch. 542	SB 285
61-1-129	amended	Ch. 241	SB 244
	repealed 1/1/2006	Ch. 542	SB 285
61-1-130	repealed 1/1/2006	Ch. 542	SB 285
61-1-131	amended	Ch. 241	SB 244
	repealed 1/1/2006	Ch. 542	SB 285
61-1-132	amended	Ch. 241	SB 244
	repealed 1/1/2006	Ch. 542	SB 285
61-1-133	repealed 1/1/2006	Ch. 542	SB 285
61-1-134	amended	Ch. 428	HB 192
	repealed 1/1/2006	Ch. 542	SB 285
61-1-135	repealed 1/1/2006	Ch. 542	SB 285
61-1-136	repealed 1/1/2006	Ch. 542	SB 285
61-1-137	amended	Ch. 428	HB 192
	repealed 1/1/2006	Ch. 542	SB 285
61-1-138	repealed 1/1/2006	Ch. 542	SB 285
61-1-139	repealed 1/1/2006	Ch. 542	SB 285
61-1-140	repealed 1/1/2006	Ch. 542	SB 285
61-1-141	repealed 1/1/2006	Ch. 542	SB 285
61-1-142	repealed 1/1/2006	Ch. 542	SB 285
61-1-201	repealed 1/1/2006	Ch. 542	SB 285
61-1-202	repealed 1/1/2006	Ch. 542	SB 285
61-1-203	repealed 1/1/2006	Ch. 542	SB 285
61-1-204	repealed 1/1/2006	Ch. 542	SB 285
61-1-205	repealed 1/1/2006	Ch. 542	SB 285
61-1-206	repealed 1/1/2006	Ch. 542	SB 285
61-1-207	repealed 1/1/2006	Ch. 542	SB 285
61-1-208	repealed 1/1/2006	Ch. 542	SB 285
61-1-209	repealed 1/1/2006	Ch. 542	SB 285
61-1-210	repealed 1/1/2006	Ch. 542	SB 285
61-1-211	repealed 1/1/2006	Ch. 542	SB 285
61-1-212	repealed 1/1/2006	Ch. 542	SB 285
61-1-301	repealed 1/1/2006	Ch. 542	SB 285
61-1-302	repealed 1/1/2006	Ch. 542	SB 285
61-1-303	repealed 1/1/2006	Ch. 542	SB 285
61-1-304	repealed 1/1/2006	Ch. 542	SB 285
61-1-305	repealed 1/1/2006	Ch. 542	SB 285
61-1-306	repealed 1/1/2006	Ch. 542	SB 285
61-1-307	repealed 1/1/2006	Ch. 542	SB 285
61-1-308	amended	Ch. 233	SB 39
	repealed 1/1/2006	Ch. 542	SB 285
61-1-309	repealed 1/1/2006	Ch. 542	SB 285
61-1-310	repealed 1/1/2006	Ch. 542	SB 285
61-1-311	repealed 1/1/2006	Ch. 542	SB 285
61-1-313	repealed 1/1/2006	Ch. 542	SB 285
61-1-314	repealed 1/1/2006	Ch. 542	SB 285
61-1-315	repealed 1/1/2006	Ch. 542	SB 285
61-1-316	repealed 1/1/2006	Ch. 542	SB 285
61-1-317	repealed 1/1/2006	Ch. 542	SB 285
61-1-318	repealed 1/1/2006	Ch. 542	SB 285
61-1-319	repealed 1/1/2006	Ch. 542	SB 285
61-1-320	repealed 1/1/2006	Ch. 542	SB 285
61-1-321	repealed 1/1/2006	Ch. 542	SB 285
61-1-401	repealed 1/1/2006	Ch. 542	SB 285
61-1-402	repealed 1/1/2006	Ch. 542	SB 285
61-1-403	repealed 1/1/2006	Ch. 542	SB 285
61-1-404	repealed 1/1/2006	Ch. 542	SB 285
61-1-405	repealed 1/1/2006	Ch. 542	SB 285
61-1-406	repealed 1/1/2006	Ch. 542	SB 285

61-1-407	repealed 1/1/2006	Ch. 542	SB 285
61-1-408	repealed 1/1/2006	Ch. 542	SB 285
61-1-409	repealed 1/1/2006	Ch. 542	SB 285
61-1-410	repealed 1/1/2006	Ch. 542	SB 285
61-1-411	repealed 1/1/2006	Ch. 542	SB 285
61-1-412	repealed 1/1/2006	Ch. 542	SB 285
61-1-413	repealed 1/1/2006	Ch. 542	SB 285
61-1-414	repealed 1/1/2006	Ch. 542	SB 285
61-1-415	repealed 1/1/2006	Ch. 542	SB 285
61-1-501	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-502	repealed 1/1/2006	Ch. 542	SB 285
61-1-503	repealed 1/1/2006	Ch. 542	SB 285
61-1-504	repealed 1/1/2006	Ch. 542	SB 285
61-1-505	amended	Ch. 428	HB 192
	repealed 1/1/2006	Ch. 542	SB 285
61-1-506	repealed 1/1/2006	Ch. 542	SB 285
61-1-507	repealed 1/1/2006	Ch. 542	SB 285
61-1-508	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-509	repealed 1/1/2006	Ch. 542	SB 285
61-1-510	repealed 1/1/2006	Ch. 542	SB 285
61-1-511	repealed 1/1/2006	Ch. 542	SB 285
61-1-512	repealed 1/1/2006	Ch. 542	SB 285
61-1-513	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-514	repealed 1/1/2006	Ch. 542	SB 285
61-1-515	repealed 1/1/2006	Ch. 542	SB 285
61-1-601	repealed 1/1/2006	Ch. 542	SB 285
61-1-602	repealed 1/1/2006	Ch. 542	SB 285
61-1-603	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-1-604	repealed 1/1/2006	Ch. 542	SB 285
61-2-102	amended	Ch. 576	SB 443
61-3-101	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-103	amended	Ch. 542	SB 285
61-3-106	amended	Ch. 542	SB 285
61-3-107	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-109	amended	Ch. 596	HB 671
61-3-110	amended	Ch. 542	SB 285
61-3-115	enacted	Ch. 596	HB 671
61-3-116	enacted	Ch. 596	HB 671
61-3-117	enacted	Ch. 596	HB 671
61-3-118	enacted	Ch. 596	HB 671
61-3-119	enacted	Ch. 596	HB 671
61-3-201	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-202	amended	Ch. 542	SB 285
61-3-203	amended	Ch. 596	HB 671
61-3-204	amended	Ch. 542	SB 285
61-3-205	amended	Ch. 542	SB 285
61-3-206	amended	Ch. 542	SB 285
61-3-207	repealed 1/1/2006	Ch. 596	HB 671
61-3-208	amended	Ch. 171	HB 275
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-209	repealed 1/1/2006	Ch. 596	HB 671
61-3-210	amended	Ch. 542	SB 285
61-3-211	amended	Ch. 542	SB 285
61-3-212	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671

61-3-213	enacted	Ch. 458	SB 507
61-3-216	amended	Ch. 542	SB 285
61-3-217	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-218	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-219	amended	Ch. 542	SB 285
61-3-220	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-221	amended	Ch. 542	SB 285
61-3-222	amended	Ch. 542	SB 285
61-3-223	amended	Ch. 542	SB 285
61-3-224	amended (Void. Sec. 138, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-301	amended	Ch. 458	SB 507
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-302	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-303	amended (Void. Sec. 8, Ch. 500)	Ch. 500	HB 541
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-311	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-312	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-313	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-314	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-315	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-316	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-317	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-318	amended	Ch. 344	HB 759
	amended	Ch. 542	SB 285
61-3-320	enacted	Ch. 458	SB 507
61-3-321	amended	Ch. 421	HB 35
	amended	Ch. 500	HB 541
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-322	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-323	amended	Ch. 542	SB 285
61-3-324	amended	Ch. 22	HB 87
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-325	amended	Ch. 22	HB 87
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-331	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-332	amended	Ch. 500	HB 541
	amended	Ch. 507	HB 645
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-333	amended (Void. Sec. 151, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-334	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671

MONTANA SESSION LAWS 2005

3272

61-3-335	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-337	enacted	Ch. 596	HB 671
61-3-342	amended	Ch. 542	SB 285
	repealed 1/1/2006	Ch. 596	HB 671
61-3-345	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-347	amended	Ch. 596	HB 671
61-3-401	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-402	amended	Ch. 596	HB 671
61-3-403	amended	Ch. 130	SB 24
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-404	amended	Ch. 542	SB 285
61-3-407	amended	Ch. 596	HB 671
61-3-411	amended	Ch. 458	SB 507
	amended	Ch. 542	SB 285
61-3-412	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-413	amended	Ch. 542	SB 285
61-3-415	amended	Ch. 596	HB 671
61-3-421	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-422	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-423	amended	Ch. 542	SB 285
61-3-425	amended (Void. Sec. 153, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-426	amended	Ch. 596	HB 671
61-3-431	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-433	amended	Ch. 596	HB 671
61-3-446	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-448	amended	Ch. 542	SB 285
61-3-456	amended	Ch. 228	HB 746
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-458	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-460	amended	Ch. 116	SB 79
	amended	Ch. 542	SB 285
61-3-463	amended	Ch. 596	HB 671
61-3-464	amended	Ch. 596	HB 671
61-3-465	amended	Ch. 542	SB 285
61-3-467	amended	Ch. 542	SB 285
61-3-468	amended	Ch. 542	SB 285
61-3-473	amended	Ch. 223	HB 301
61-3-474	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-476	amended	Ch. 223	HB 301
61-3-477	amended	Ch. 223	HB 301
61-3-479	amended (Void. Sec. 8, Ch. 500)	Ch. 500	HB 541
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-480	amended	Ch. 223	HB 301
	amended	Ch. 542	SB 285
61-3-481	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-501	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671

61-3-503	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-506	amended	Ch. 542	SB 285
61-3-507	amended	Ch. 542	SB 285
61-3-509	amended	Ch. 542	SB 285
61-3-520	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-521	repealed 1/1/2006	Ch. 542	SB 285
61-3-522	amended	Ch. 130	SB 24
	amended (Void. Sec. 8, Ch. 500)	Ch. 500	HB 541
	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-523	repealed 1/1/2006	Ch. 542	SB 285
61-3-526	amended	Ch. 542	SB 285
	repealed 1/1/2006	Ch. 596	HB 671
61-3-527	amended	Ch. 464	HB 102
	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-528	repealed 1/1/2006	Ch. 542	SB 285
61-3-529	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-530	amended	Ch. 464	HB 102
	repealed 1/1/2006	Ch. 542	SB 285
61-3-535	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-537	amended	Ch. 542	SB 285
61-3-560	amended	Ch. 532	SB 68
	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 584	HB 115
	amended	Ch. 596	HB 671
61-3-561	repealed 1/1/2006	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-562	amended	Ch. 464	HB 102
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-603	amended	Ch. 542	SB 285
61-3-604	amended	Ch. 542	SB 285
61-3-607	amended	Ch. 542	SB 285
61-3-701	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-702	amended	Ch. 542	SB 285
61-3-703	amended	Ch. 542	SB 285
61-3-704	amended	Ch. 542	SB 285
61-3-707	amended (Void. Sec. 158, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-708	amended	Ch. 542	SB 285
61-3-709	amended	Ch. 542	SB 285
61-3-711	amended	Ch. 542	SB 285
61-3-712	amended	Ch. 542	SB 285
61-3-714	amended	Ch. 542	SB 285
61-3-715	amended	Ch. 542	SB 285
61-3-716	amended	Ch. 542	SB 285
61-3-717	amended	Ch. 542	SB 285
61-3-718	amended	Ch. 542	SB 285
61-3-719	amended	Ch. 542	SB 285
61-3-720	amended	Ch. 542	SB 285
61-3-721	amended	Ch. 315	HB 55
	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-3-722	amended	Ch. 130	SB 24
	amended	Ch. 542	SB 285
61-3-723	amended	Ch. 542	SB 285
61-3-724	amended	Ch. 542	SB 285

MONTANA SESSION LAWS 2005

3274

61-3-725	amended	Ch. 542	SB 285
61-3-727	amended	Ch. 542	SB 285
61-3-728	amended	Ch. 542	SB 285
61-3-729	amended	Ch. 542	SB 285
61-3-730	amended	Ch. 542	SB 285
61-3-732	amended	Ch. 542	SB 285
61-3-733	amended	Ch. 542	SB 285
61-3-736	amended	Ch. 542	SB 285
61-3-737	amended	Ch. 542	SB 285
61-4-101	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-102	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-104	amended	Ch. 542	SB 285
61-4-109	amended	Ch. 542	SB 285
61-4-110	amended	Ch. 542	SB 285
61-4-111	amended (Void. Sec. 160, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-112	amended (Void. Sec. 161, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-113	amended	Ch. 542	SB 285
61-4-120	amended	Ch. 542	SB 285
61-4-121	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-122	amended	Ch. 542	SB 285
61-4-123	amended	Ch. 542	SB 285
61-4-125	amended	Ch. 542	SB 285
61-4-129	amended	Ch. 258	SB 369
	amended	Ch. 542	SB 285
61-4-131	amended	Ch. 542	SB 285
61-4-141	amended	Ch. 542	SB 285
61-4-143	amended	Ch. 542	SB 285
61-4-202	amended	Ch. 542	SB 285
61-4-204	amended	Ch. 542	SB 285
61-4-208	amended	Ch. 542	SB 285
61-4-222	amended	Ch. 596	HB 671
61-4-223	amended	Ch. 130	SB 24
	amended	Ch. 596	HB 671
61-4-301	amended	Ch. 542	SB 285
61-4-302	amended	Ch. 542	SB 285
61-4-306	amended	Ch. 542	SB 285
61-4-307	amended	Ch. 542	SB 285
61-4-310	amended (Void. Sec. 162, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-4-404	amended	Ch. 542	SB 285
61-4-501	amended	Ch. 542	SB 285
61-4-503	amended	Ch. 542	SB 285
61-4-504	amended	Ch. 542	SB 285
61-4-505	amended	Ch. 542	SB 285
61-4-506	amended	Ch. 542	SB 285
61-4-507	amended	Ch. 280	HB 425
61-4-511	amended	Ch. 280	HB 425
	amended	Ch. 542	SB 285
61-4-512	amended	Ch. 280	HB 425
61-4-515	amended	Ch. 130	SB 24
	amended	Ch. 280	HB 425
61-4-516	amended	Ch. 280	HB 425
61-4-517	amended	Ch. 280	HB 425
61-4-518	amended	Ch. 280	HB 425
61-4-519	amended	Ch. 280	HB 425
	amended	Ch. 542	SB 285
61-4-520	amended	Ch. 130	SB 24
	amended	Ch. 280	HB 425

61-4-525	amended	Ch. 280	HB 425
	amended	Ch. 542	SB 285
61-4-526	amended	Ch. 280	HB 425
61-4-532	amended	Ch. 280	HB 425
61-5-101	amended	Ch. 358	SB 174
61-5-102	amended	Ch. 79	HB 224
61-5-103	amended	Ch. 428	HB 192
	amended	Ch. 596	HB 671
61-5-104	amended	Ch. 428	HB 192
	amended	Ch. 542	SB 285
61-5-105	amended	Ch. 428	HB 192
	amended	Ch. 478	HB 385
61-5-106	amended	Ch. 297	SB 104
61-5-107	amended	Ch. 180	HB 478
	amended	Ch. 428	HB 192
	amended	Ch. 478	HB 385
61-5-110	amended	Ch. 79	HB 224
	amended	Ch. 428	HB 192
61-5-111	amended	Ch. 104	SB 9
	amended	Ch. 297	SB 104
	amended	Ch. 428	HB 192
	amended	Ch. 478	HB 385
	amended	Ch. 596	HB 671
61-5-112	amended	Ch. 428	HB 192
	amended	Ch. 542	SB 285
61-5-114	amended	Ch. 428	HB 192
	amended	Ch. 596	HB 671
61-5-115	amended	Ch. 596	HB 671
61-5-119	amended	Ch. 428	HB 192
	amended	Ch. 542	SB 285
61-5-121	amended (Void. Sec. 164, Ch. 596)	Ch. 428	HB 192
	amended	Ch. 464	HB 102
	amended (Void. Sec. 164, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 596	HB 671
61-5-125	amended	Ch. 428	HB 192
	amended	Ch. 478	HB 385
61-5-131	enacted	Ch. 297	SB 104
61-5-132	enacted	Ch. 297	SB 104
61-5-133	enacted	Ch. 297	SB 104
61-5-134	enacted	Ch. 297	SB 104
61-5-135	enacted	Ch. 297	SB 104
61-5-201	amended	Ch. 428	HB 192
61-5-206	amended	Ch. 596	HB 671
61-5-208	amended (Void. Sec. 166, Ch. 596)	Ch. 542	SB 285
	amended	Ch. 547	SB 423
	amended	Ch. 596	HB 671
61-5-212	amended	Ch. 583	HB 99
61-5-213	amended	Ch. 428	HB 192
61-5-220	enacted	Ch. 428	HB 192
61-5-221	enacted and amended	Ch. 428	HB 192
61-5-301	amended	Ch. 296	SB 1
61-6-102	amended	Ch. 542	SB 285
61-6-301	amended	Ch. 542	SB 285
61-6-304	amended	Ch. 394	SB 248
61-8-102	amended	Ch. 233	SB 39
	amended	Ch. 542	SB 285
61-8-201	amended	Ch. 542	SB 285
61-8-210	amended	Ch. 542	SB 285
61-8-310	amended	Ch. 542	SB 285
61-8-336	amended	Ch. 542	SB 285
61-8-341	amended	Ch. 542	SB 285
61-8-351	amended	Ch. 417	SB 487
61-8-354	amended	Ch. 542	SB 285

MONTANA SESSION LAWS 2005

3276

61-8-371	amended	Ch. 542	SB 285
61-8-375	enacted	Ch. 468	HB 186
61-8-376	enacted and amended	Ch. 468	HB 186
61-8-379	enacted	Ch. 542	SB 285
61-8-380	amended	Ch. 542	SB 285
61-8-383	amended	Ch. 542	SB 285
61-8-384	amended	Ch. 542	SB 285
61-8-401	amended	Ch. 542	SB 285
61-8-441	amended	Ch. 547	SB 423
61-8-442	amended	Ch. 547	SB 423
	amended	Ch. 596	HB 671
61-8-460	enacted	Ch. 348	SB 80
61-8-461	enacted	Ch. 348	SB 80
61-8-501	amended	Ch. 233	SB 39
61-8-506	amended	Ch. 233	SB 39
61-8-605	amended	Ch. 542	SB 285
61-8-704	amended	Ch. 542	SB 285
61-8-713	amended	Ch. 542	SB 285
61-8-714	amended	Ch. 426	HB 46
	amended	Ch. 477	HB 374
61-8-715	amended	Ch. 417	SB 487
61-8-722	amended	Ch. 426	HB 46
	amended	Ch. 477	HB 374
61-8-725	amended	Ch. 428	HB 192
61-8-726	enacted	Ch. 232	SB 38
61-8-731	amended	Ch. 54	HB 97
	amended	Ch. 426	HB 46
	amended	Ch. 449	SB 146
61-8-733	amended	Ch. 583	HB 99
61-8-734	amended	Ch. 54	HB 97
61-8-801	amended	Ch. 542	SB 285
61-8-802	amended	Ch. 428	HB 192
61-8-803	amended	Ch. 428	HB 192
61-8-807	amended	Ch. 428	HB 192
61-8-809	repealed	Ch. 428	HB 192
61-8-810	repealed	Ch. 428	HB 192
61-8-811	repealed	Ch. 428	HB 192
61-8-812	amended	Ch. 428	HB 192
61-8-815	enacted	Ch. 428	HB 192
61-8-816	enacted	Ch. 428	HB 192
61-8-817	enacted	Ch. 428	HB 192
61-8-906	amended	Ch. 130	SB 24
61-8-913	amended	Ch. 130	SB 24
61-9-102	amended	Ch. 542	SB 285
61-9-103	amended	Ch. 542	SB 285
61-9-204	amended	Ch. 458	SB 507
61-9-226	amended	Ch. 542	SB 285
61-9-302	amended	Ch. 542	SB 285
61-9-304	amended	Ch. 542	SB 285
61-9-321	amended	Ch. 542	SB 285
61-9-402	amended	Ch. 542	SB 285
61-9-405	amended	Ch. 542	SB 285
61-9-406	amended	Ch. 542	SB 285
61-9-407	amended	Ch. 458	SB 507
61-9-412	amended	Ch. 542	SB 285
61-9-415	amended	Ch. 542	SB 285
61-9-426	amended	Ch. 542	SB 285
61-9-430	amended	Ch. 458	SB 507
61-9-512	amended	Ch. 366	SB 459
61-10-102	amended	Ch. 241	SB 244
	amended	Ch. 542	SB 285
61-10-104	amended	Ch. 542	SB 285
61-10-107	amended	Ch. 342	HB 684

61-10-123	amended	Ch. 542	SB 285
61-10-124	amended	Ch. 509	HB 678
61-10-125	amended	Ch. 24	HB 101
61-10-141	amended	Ch. 366	SB 459
	amended	Ch. 542	SB 285
61-10-148	amended	Ch. 542	SB 285
61-10-154	enacted	Ch. 366	SB 459
	amended	Ch. 428	HB 192
61-10-206	amended	Ch. 542	SB 285
61-10-214	amended	Ch. 532	SB 68
	amended	Ch. 584	HB 115
61-10-222	amended	Ch. 596	HB 671
61-10-225	amended	Ch. 542	SB 285
61-10-227	amended	Ch. 130	SB 24
61-10-233	amended	Ch. 130	SB 24
61-11-101	amended	Ch. 428	HB 192
61-11-102	amended	Ch. 428	HB 192
	amended	Ch. 596	HB 671
61-11-105	amended	Ch. 596	HB 671
61-11-203	amended	Ch. 428	HB 192
	amended	Ch. 542	SB 285
61-11-204	amended	Ch. 596	HB 671
61-11-210	amended	Ch. 596	HB 671
61-12-101	amended	Ch. 468	HB 186
	amended	Ch. 542	SB 285
61-12-102	amended	Ch. 542	SB 285
61-12-205	amended	Ch. 366	SB 459
61-12-206	amended	Ch. 366	SB 459
61-12-208	amended	Ch. 366	SB 459
61-13-103	amended	Ch. 542	SB 285
67-1-101	amended	Ch. 300	SB 255
67-4-101	repealed	Ch. 300	SB 255
67-4-102	repealed	Ch. 300	SB 255
67-4-201	repealed	Ch. 300	SB 255
67-4-202	repealed	Ch. 300	SB 255
67-4-203	repealed	Ch. 300	SB 255
67-4-204	repealed	Ch. 300	SB 255
67-4-211	repealed	Ch. 300	SB 255
67-4-301	repealed	Ch. 300	SB 255
67-4-302	repealed	Ch. 300	SB 255
67-4-303	repealed	Ch. 300	SB 255
67-4-304	repealed	Ch. 300	SB 255
67-4-311	repealed	Ch. 300	SB 255
67-4-312	repealed	Ch. 300	SB 255
67-4-313	repealed	Ch. 300	SB 255
67-4-314	repealed	Ch. 300	SB 255
67-4-401	repealed	Ch. 300	SB 255
67-4-402	repealed	Ch. 300	SB 255
67-5-101	repealed	Ch. 300	SB 255
67-5-102	repealed	Ch. 300	SB 255
67-5-201	repealed	Ch. 300	SB 255
67-5-202	repealed	Ch. 300	SB 255
67-5-203	repealed	Ch. 300	SB 255
67-5-204	repealed	Ch. 300	SB 255
67-5-211	repealed	Ch. 300	SB 255
67-5-212	repealed	Ch. 300	SB 255
67-6-101	repealed	Ch. 300	SB 255
67-6-102	repealed	Ch. 300	SB 255
67-6-103	repealed	Ch. 300	SB 255
67-6-201	repealed	Ch. 300	SB 255
67-6-202	repealed	Ch. 300	SB 255
67-6-203	repealed	Ch. 300	SB 255
67-6-204	repealed	Ch. 300	SB 255

MONTANA SESSION LAWS 2005

3278

67-6-205	repealed	Ch. 300	SB 255
67-6-206	repealed	Ch. 300	SB 255
67-6-207	repealed	Ch. 300	SB 255
67-6-211	repealed	Ch. 300	SB 255
67-6-301	repealed	Ch. 300	SB 255
67-7-101	enacted	Ch. 300	SB 255
67-7-102	enacted	Ch. 300	SB 255
67-7-103	enacted	Ch. 300	SB 255
67-7-201	enacted	Ch. 300	SB 255
67-7-202	enacted	Ch. 300	SB 255
67-7-203	enacted	Ch. 300	SB 255
67-7-204	enacted	Ch. 300	SB 255
67-7-208	enacted	Ch. 300	SB 255
67-7-209	enacted	Ch. 300	SB 255
67-7-210	enacted	Ch. 300	SB 255
67-7-211	enacted	Ch. 300	SB 255
67-7-212	enacted	Ch. 300	SB 255
67-7-301	enacted	Ch. 300	SB 255
67-7-302	enacted	Ch. 300	SB 255
67-7-303	enacted	Ch. 300	SB 255
67-7-304	enacted	Ch. 300	SB 255
67-7-305	enacted	Ch. 300	SB 255
67-10-102	amended	Ch. 300	SB 255
67-10-202	amended	Ch. 300	SB 255
67-10-231	amended	Ch. 300	SB 255
67-10-402	amended	Ch. 300	SB 255
	amended	Ch. 453	SB 301
67-10-902	amended	Ch. 300	SB 255
67-11-103	amended	Ch. 300	SB 255
67-11-201	amended	Ch. 300	SB 255
	amended	Ch. 574	SB 342
67-11-241	amended	Ch. 300	SB 255
69-1-114	amended	Ch. 224	HB 316
69-1-402	amended	Ch. 224	HB 316
69-3-105	amended	Ch. 144	SB 356
69-3-207	amended	Ch. 124	SB 169
69-3-1409	repealed	Ch. 107	SB 26
69-3-1501	enacted	Ch. 220	HB 153
69-3-1502	enacted	Ch. 220	HB 153
69-3-1503	enacted	Ch. 220	HB 153
69-4-501	amended	Ch. 544	SB 326
69-4-505	amended	Ch. 544	SB 326
69-4-512	enacted	Ch. 544	SB 326
69-4-513	enacted	Ch. 544	SB 326
69-4-514	enacted	Ch. 544	SB 326
69-8-402	amended	Ch. 256	SB 365
69-8-1001	enacted	Ch. 457	SB 415
69-8-1002	enacted	Ch. 457	SB 415
69-8-1003	enacted	Ch. 457	SB 415
69-8-1004	enacted	Ch. 457	SB 415
69-8-1005	enacted	Ch. 457	SB 415
69-8-1006	enacted	Ch. 457	SB 415
69-8-1007	enacted	Ch. 457	SB 415
69-8-1008	enacted	Ch. 457	SB 415
69-12-102	amended	Ch. 82	HB 273
70-1-106	amended	Ch. 450	SB 261
70-9-701	repealed	Ch. 163	HB 223
70-16-107	amended	Ch. 239	SB 214
70-16-108	repealed	Ch. 239	SB 214
70-24-432	amended	Ch. 90	HB 354
70-30-102	amended	Ch. 300	SB 255
71-1-303	amended	Ch. 413	SB 466
71-1-307	amended	Ch. 413	SB 466

71-1-308.	enacted.	Ch. 413	SB 466
71-1-309.	enacted.	Ch. 413	SB 466
71-1-310.	enacted.	Ch. 413	SB 466
71-3-125	amended.	Ch. 575	SB 401
71-3-534	amended.	Ch. 130	SB 24
71-3-1118	amended.	Ch. 416	SB 481
71-3-1506.	enacted.	Ch. 545	SB 345
72-1-103	amended.	Ch. 130	SB 24
72-3-203	amended.	Ch. 410	SB 435
72-3-212	amended.	Ch. 410	SB 435
72-3-220.	enacted.	Ch. 410	SB 435
72-3-301	amended.	Ch. 410	SB 435
72-3-320.	enacted.	Ch. 410	SB 435
72-3-1101	amended.	Ch. 513	HB 701
72-4-303	amended.	Ch. 513	HB 701
72-5-225	amended.	Ch. 449	SB 146
72-5-234	amended.	Ch. 449	SB 146
72-5-315	amended.	Ch. 449	SB 146
72-5-322	amended.	Ch. 449	SB 146
72-5-408	amended.	Ch. 449	SB 146
72-6-301	amended.	Ch. 76	HB 207
72-16-906	amended.	Ch. 513	HB 701
72-31-201	amended.	Ch. 159	HB 196
72-34-442	amended.	Ch. 513	HB 701
75-1-202	amended.	Ch. 337	HB 470
75-1-205	amended.	Ch. 337	HB 470
75-1-207	amended.	Ch. 337	HB 470
75-1-208	amended.	Ch. 337	HB 470
75-1-1001.	enacted.	Ch. 487	HB 429
75-1-1002.	enacted.	Ch. 487	HB 429
75-2-103	amended.	Ch. 236	SB 95
75-2-104	amended.	Ch. 337	HB 470
75-2-211	amended.	Ch. 188	HB 581
	amended.	Ch. 236	SB 95
	amended.	Ch. 337	HB 470
75-2-218	amended.	Ch. 236	SB 95
75-2-225	amended.	Ch. 129	HB 463
75-2-226	amended.	Ch. 129	HB 463
75-2-401	amended.	Ch. 487	HB 429
75-2-413	amended.	Ch. 487	HB 429
75-2-514	amended.	Ch. 487	HB 429
75-2-515	amended.	Ch. 487	HB 429
75-5-611	amended.	Ch. 487	HB 429
75-5-631	amended.	Ch. 487	HB 429
75-5-801.	enacted.	Ch. 403	SB 320
75-5-802.	enacted.	Ch. 403	SB 320
75-5-803.	enacted.	Ch. 403	SB 320
75-5-1122	amended.	Ch. 323	HB 142
75-6-109	amended.	Ch. 487	HB 429
75-6-114	amended.	Ch. 487	HB 429
75-6-226	amended.	Ch. 323	HB 142
75-6-227	amended.	Ch. 323	HB 142
75-10-227	amended.	Ch. 443	HB 453
75-10-228	amended.	Ch. 443	HB 453
	amended (Void. Sec. 9, Ch. 443).	Ch. 487	HB 429
75-10-417	amended.	Ch. 487	HB 429
75-10-424	amended.	Ch. 487	HB 429
75-10-532	amended.	Ch. 542	SB 285
75-10-540	amended.	Ch. 443	HB 453
75-10-542	amended.	Ch. 443	HB 453
	amended (Void. Sec. 10, Ch. 443).	Ch. 487	HB 429
75-10-621	amended.	Ch. 425	SB 489

75-10-704	amended	Ch. 355	SB 143
	amended	Ch. 425	SB 489
75-10-743	amended	Ch. 278	HB 379
	amended	Ch. 355	SB 143
	amended	Ch. 425	SB 489
75-10-802	amended	Ch. 62	HB 144
75-10-803	amended	Ch. 62	HB 144
75-10-804	amended	Ch. 62	HB 144
75-10-805	amended	Ch. 62	HB 144
75-10-807	amended	Ch. 62	HB 144
75-10-922	amended	Ch. 337	HB 470
75-10-1203	amended	Ch. 18	HB 77
75-10-1212	amended	Ch. 18	HB 77
75-10-1222	amended	Ch. 487	HB 429
75-10-1223	amended	Ch. 487	HB 429
75-10-1301	enacted	Ch. 461	HB 60
75-10-1302	enacted	Ch. 461	HB 60
75-10-1303	enacted	Ch. 461	HB 60
75-10-1304	enacted	Ch. 461	HB 60
75-10-1305	enacted	Ch. 461	HB 60
75-10-1306	enacted	Ch. 461	HB 60
75-11-218	amended	Ch. 443	HB 453
75-11-223	amended	Ch. 443	HB 453
	amended	Ch. 487	HB 429
75-11-308	amended	Ch. 356	SB 145
75-11-309	amended	Ch. 356	SB 145
75-11-312	amended	Ch. 356	SB 145
75-11-318	amended	Ch. 356	SB 145
75-11-509	amended	Ch. 20	HB 78
75-11-516	amended	Ch. 487	HB 429
75-11-525	amended	Ch. 487	HB 429
75-20-104	amended	Ch. 142	SB 235
75-20-201	amended	Ch. 337	HB 470
75-20-216	amended	Ch. 337	HB 470
75-20-401	amended	Ch. 337	HB 470
75-20-406	amended	Ch. 337	HB 470
75-20-408	amended	Ch. 487	HB 429
75-25-101	amended	Ch. 110	SB 50
75-25-102	amended	Ch. 110	SB 50
76-2-202	amended	Ch. 542	SB 285
	amended	Ch. 596	HB 671
76-2-209	amended	Ch. 340	HB 591
76-2-302	amended	Ch. 542	SB 285
	amended (Void. Sec. 167, Ch. 596)	Ch. 596	HB 671
76-3-103	amended	Ch. 298	SB 116
76-3-207	amended	Ch. 252	SB 350
76-3-501	amended	Ch. 298	SB 116
76-3-504	amended	Ch. 298	SB 116
	amended	Ch. 302	SB 290
76-3-505	repealed	Ch. 298	SB 116
76-3-511	amended	Ch. 302	SB 290
76-3-601	amended	Ch. 298	SB 116
	amended	Ch. 302	SB 290
76-3-602	amended	Ch. 298	SB 116
76-3-603	amended	Ch. 298	SB 116
76-3-604	amended	Ch. 298	SB 116
	amended	Ch. 302	SB 290
76-3-605	amended	Ch. 298	SB 116
76-3-608	amended	Ch. 298	SB 116
	amended	Ch. 302	SB 290
76-3-609	amended	Ch. 298	SB 116
76-3-610	amended	Ch. 298	SB 116
76-3-615	enacted	Ch. 298	SB 116

76-3-620	amended	Ch. 298	SB 116
76-3-621	amended	Ch. 333	HB 436
76-3-622	enacted	Ch. 302	SB 290
76-3-625	amended	Ch. 298	SB 116
76-4-104	amended	Ch. 302	SB 290
76-4-108	amended	Ch. 443	HB 453
76-4-109	amended	Ch. 443	HB 453
	amended	Ch. 487	HB 429
76-4-125	amended	Ch. 302	SB 290
	amended	Ch. 337	HB 470
76-4-127	amended	Ch. 298	SB 116
	amended	Ch. 433	HB 230
76-4-1001	enacted	Ch. 487	HB 429
76-4-1002	enacted	Ch. 487	HB 429
76-6-107	amended	Ch. 88	HB 347
76-13-601	amended	Ch. 366	SB 459
77-1-130	amended	Ch. 57	HB 114
77-1-202	amended	Ch. 335	HB 450
77-1-904	amended	Ch. 335	HB 450
77-2-310	amended	Ch. 335	HB 450
77-5-212	amended	Ch. 101	HB 612
77-6-203	amended	Ch. 89	HB 350
77-6-302	amended	Ch. 476	HB 351
77-6-306	amended	Ch. 476	HB 351
80-4-421	amended	Ch. 131	SB 51
80-4-606	amended	Ch. 131	SB 51
80-7-508	amended	Ch. 472	HB 266
80-7-801	amended	Ch. 472	HB 266
80-7-811	amended	Ch. 472	HB 266
80-7-814	amended	Ch. 472	HB 266
80-7-815	amended	Ch. 472	HB 266
80-8-207	amended	Ch. 467	HB 182
80-9-101	amended	Ch. 37	HB 274
80-9-201	amended	Ch. 37	HB 274
80-9-202	amended	Ch. 37	HB 274
80-9-206	amended	Ch. 37	HB 274
80-9-301	amended	Ch. 37	HB 274
80-10-503	amended	Ch. 334	HB 440
80-10-510	enacted	Ch. 334	HB 440
80-15-212	amended	Ch. 561	SB 107
80-15-213	amended	Ch. 561	SB 107
81-7-303	amended	Ch. 12	HB 37
	amended	Ch. 176	HB 371
81-7-603	amended	Ch. 12	HB 37
	amended	Ch. 176	HB 371
81-8-504	amended	Ch. 453	SB 301
81-9-201	amended	Ch. 494	HB 484
81-9-217	amended	Ch. 494	HB 484
81-9-220	amended	Ch. 494	HB 484
81-9-227	amended	Ch. 494	HB 484
81-9-228	amended	Ch. 494	HB 484
82-4-122	amended	Ch. 337	HB 470
82-4-141	amended	Ch. 487	HB 429
82-4-206	amended	Ch. 127	HB 370
82-4-223	amended	Ch. 127	HB 370
82-4-225	amended	Ch. 127	HB 370
82-4-226	amended	Ch. 127	HB 370
82-4-227	amended	Ch. 127	HB 370
82-4-231	amended	Ch. 127	HB 370
	amended	Ch. 337	HB 470
82-4-232	amended	Ch. 127	HB 370
82-4-233	amended	Ch. 127	HB 370
82-4-235	amended	Ch. 127	HB 370

MONTANA SESSION LAWS 2005

3282

82-4-251	amended	Ch. 127	HB 370
82-4-254	amended	Ch. 486	HB 428
	amended	Ch. 487	HB 429
82-4-303	amended	Ch. 63	HB 147
82-4-305	amended	Ch. 63	HB 147
	amended	Ch. 505	HB 606
82-4-335	amended	Ch. 63	HB 147
82-4-337	amended	Ch. 63	HB 147
	amended	Ch. 337	HB 470
82-4-338	amended	Ch. 32	HB 185
82-4-339	amended	Ch. 63	HB 147
82-4-349	amended	Ch. 337	HB 470
82-4-361	amended	Ch. 486	HB 428
	amended	Ch. 487	HB 429
82-4-367	enacted	Ch. 278	HB 379
82-4-427	amended	Ch. 337	HB 470
82-4-433	amended	Ch. 32	HB 185
82-4-436	amended	Ch. 337	HB 470
82-4-441	amended	Ch. 486	HB 428
	amended (Void. Sec. 4, Ch. 486)	Ch. 487	HB 429
82-4-1001	enacted	Ch. 487	HB 429
82-4-1002	enacted	Ch. 487	HB 429
82-10-104	amended	Ch. 19	HB 43
82-15-101	amended	Ch. 452	SB 293
82-15-102	amended	Ch. 385	SB 131
	amended	Ch. 452	SB 293
82-15-103	amended	Ch. 130	SB 24
	amended	Ch. 452	SB 293
82-15-104	amended	Ch. 385	SB 131
	amended	Ch. 452	SB 293
82-15-106	amended	Ch. 385	SB 131
	amended	Ch. 452	SB 293
82-15-110	amended	Ch. 385	SB 131
	amended	Ch. 452	SB 293
82-15-111	amended	Ch. 385	SB 131
	amended	Ch. 452	SB 293
82-15-120	enacted	Ch. 385	SB 131
82-15-121	enacted	Ch. 452	SB 293
82-15-122	enacted	Ch. 452	SB 293
82-15-123	enacted	Ch. 452	SB 293
85-1-602	amended	Ch. 117	SB 83
85-1-604	amended	Ch. 307	HB 6
85-1-613	amended	Ch. 418	SB 498
85-2-102	amended	Ch. 70	HB 178
	amended	Ch. 85	HB 308
85-2-113	amended	Ch. 161	HB 206
85-2-117	amended	Ch. 70	HB 178
85-2-124	amended	Ch. 337	HB 470
85-2-125	amended	Ch. 100	HB 609
85-2-227	amended	Ch. 17	SB 20
85-2-231	amended	Ch. 288	HB 22
85-2-232	amended	Ch. 526	HB 782
85-2-233	amended	Ch. 526	HB 782
85-2-234	amended	Ch. 526	HB 782
85-2-235	amended	Ch. 526	HB 782
85-2-237	amended	Ch. 288	HB 22
85-2-247	enacted	Ch. 526	HB 782
85-2-248	enacted	Ch. 526	HB 782
85-2-249	enacted	Ch. 526	HB 782
85-2-250	enacted	Ch. 526	HB 782
85-2-270	enacted	Ch. 288	HB 22
85-2-271	enacted	Ch. 288	HB 22
85-2-272	enacted	Ch. 288	HB 22

85-2-273.	enacted.	Ch. 288	HB 22
85-2-276.	enacted.	Ch. 288	HB 22
85-2-279.	enacted.	Ch. 288	HB 22
85-2-280.	enacted.	Ch. 288	HB 22
85-2-281.	enacted.	Ch. 288	HB 22
85-2-282.	enacted.	Ch. 288	HB 22
85-2-283.	enacted.	Ch. 288	HB 22
85-2-306	amended.	Ch. 161	HB 206
85-2-307	amended.	Ch. 70	HB 178
85-2-308	amended.	Ch. 70	HB 178
85-2-310	amended.	Ch. 70	HB 178
	amended.	Ch. 337	HB 470
85-2-314	amended.	Ch. 70	HB 178
85-2-316	amended.	Ch. 70	HB 178
85-2-322	amended.	Ch. 161	HB 206
85-2-338	amended.	Ch. 85	HB 308
85-2-350	amended.	Ch. 434	HB 236
85-2-355.	enacted.	Ch. 161	HB 206
85-2-402	amended.	Ch. 85	HB 308
85-2-404	amended.	Ch. 85	HB 308
85-2-407	amended.	Ch. 85	HB 308
85-2-408	amended.	Ch. 85	HB 308
85-2-409	repealed.	Ch. 85	HB 308
85-2-419	amended.	Ch. 85	HB 308
85-2-421	amended.	Ch. 70	HB 178
85-2-423	amended.	Ch. 70	HB 178
85-2-424	amended.	Ch. 70	HB 178
85-2-426	amended.	Ch. 70	HB 178
85-2-431	amended.	Ch. 70	HB 178
85-2-436	amended.	Ch. 85	HB 308
85-2-439	repealed.	Ch. 85	HB 308
85-2-440	repealed.	Ch. 85	HB 308
85-2-507	amended.	Ch. 161	HB 206
85-2-508	amended.	Ch. 161	HB 206
85-5-101	amended.	Ch. 416	SB 481
85-7-304	amended.	Ch. 130	SB 24
85-7-1501	amended.	Ch. 402	SB 314
85-7-2141	repealed.	Ch. 130	SB 24
87-1-102	amended.	Ch. 59	HB 131
87-1-111	amended.	Ch. 227	HB 514
87-1-115	amended.	Ch. 227	HB 514
87-1-209	amended.	Ch. 430	HB 208
	amended.	Ch. 560	HB 5
87-1-228	amended.	Ch. 146	SB 187
87-1-266	amended.	Ch. 471	HB 235
87-1-267	amended.	Ch. 471	HB 235
87-1-269	amended.	Ch. 48	HB 56
	amended.	Ch. 235	SB 77
	amended.	Ch. 471	HB 235
87-1-271.	enacted.	Ch. 471	HB 235
87-1-274.	enacted.	Ch. 84	HB 298
87-1-301	amended.	Ch. 430	HB 208
87-1-601	amended.	Ch. 326	HB 173
	amended.	Ch. 560	HB 5
87-2-104	amended.	Ch. 470	HB 214
87-2-105	amended.	Ch. 80	HB 242
87-2-113	amended.	Ch. 585	HB 172
87-2-121.	enacted.	Ch. 164	HB 225
87-2-202	amended.	Ch. 573	SB 339
	amended.	Ch. 585	HB 172
87-2-301	amended.	Ch. 585	HB 172
87-2-306	amended.	Ch. 585	HB 172
87-2-401	amended.	Ch. 585	HB 172

87-2-403	amended	Ch. 150	HB 34
	amended	Ch. 585	HB 172
87-2-411	amended	Ch. 585	HB 172
87-2-501	amended	Ch. 585	HB 172
87-2-505	amended	Ch. 585	HB 172
87-2-506	amended	Ch. 556	HB 272
87-2-508	amended	Ch. 585	HB 172
87-2-510	amended	Ch. 585	HB 172
87-2-511	amended	Ch. 470	HB 214
87-2-514	enacted	Ch. 484	HB 421
87-2-515	enacted	Ch. 484	HB 421
87-2-522	enacted	Ch. 470	HB 214
87-2-701	amended	Ch. 585	HB 172
87-2-702	amended	Ch. 471	HB 235
87-2-704	amended	Ch. 585	HB 172
87-2-706	amended	Ch. 556	HB 272
87-2-708	amended	Ch. 585	HB 172
87-2-711	amended	Ch. 573	SB 339
	amended	Ch. 585	HB 172
87-2-725	enacted	Ch. 40	HB 14
87-2-731	enacted	Ch. 378	SB 91
87-2-801	amended	Ch. 585	HB 172
87-2-803	amended	Ch. 542	SB 285
	amended	Ch. 556	HB 272
	amended	Ch. 573	SB 339
	amended	Ch. 585	HB 172
87-2-805	amended	Ch. 80	HB 242
	amended	Ch. 585	HB 172
87-2-809	enacted	Ch. 585	HB 172
87-2-903	amended	Ch. 515	HB 707
87-3-101	amended	Ch. 542	SB 285
87-3-111	amended	Ch. 59	HB 131
87-3-112	amended	Ch. 59	HB 131
87-3-113	repealed	Ch. 59	HB 131
87-3-115	amended	Ch. 59	HB 131
87-3-117	amended	Ch. 59	HB 131
87-3-118	amended	Ch. 59	HB 131
87-3-126	amended	Ch. 211	SB 178
87-3-235	amended	Ch. 245	SB 298
87-3-236	amended	Ch. 245	SB 298
87-3-237	enacted	Ch. 343	HB 698
87-3-305	amended	Ch. 261	SB 410
87-3-307	amended	Ch. 424	SB 186
87-4-606	amended	Ch. 157	HB 174
87-5-107	amended	Ch. 46	HB 50
87-5-132	enacted	Ch. 578	SB 461
87-5-405	repealed	Ch. 419	SB 503
87-5-703	amended	Ch. 281	HB 668
87-5-704	amended	Ch. 281	HB 668
87-5-709	amended	Ch. 281	HB 668
87-5-712	amended	Ch. 281	HB 668
87-5-721	amended	Ch. 281	HB 668
90-1-105	amended	Ch. 248	SB 329
90-1-112	amended	Ch. 537	SB 133
90-1-115	enacted	Ch. 223	HB 301
90-1-131	amended	Ch. 460	HB 18
90-1-151	enacted	Ch. 181	HB 481
90-1-201	enacted	Ch. 588	HB 249
90-1-202	enacted	Ch. 588	HB 249
90-1-203	enacted	Ch. 588	HB 249
90-1-204	enacted	Ch. 588	HB 249
90-1-205	enacted	Ch. 588	HB 249
90-1-401	enacted	Ch. 135	SB 98

90-1-402.	enacted	Ch. 135	SB 98
90-1-403.	enacted	Ch. 135	SB 98
90-1-404.	enacted	Ch. 135	SB 98
90-1-405.	enacted	Ch. 135	SB 98
90-1-406.	enacted	Ch. 135	SB 98
90-1-409.	enacted	Ch. 135	SB 98
90-1-410.	enacted	Ch. 135	SB 98
90-1-411.	enacted	Ch. 135	SB 98
90-1-413.	enacted	Ch. 135	SB 98
90-2-1104	amended	Ch. 308	HB 7
90-4-605	amended	Ch. 310	HB 12
90-4-1002	amended	Ch. 221	HB 199
90-4-1003	amended	Ch. 221	HB 199
90-4-1101.	enacted	Ch. 162	HB 212
90-4-1102.	enacted	Ch. 162	HB 212
90-4-1103.	enacted	Ch. 162	HB 212
90-4-1104.	enacted	Ch. 162	HB 212
90-4-1105.	enacted	Ch. 162	HB 212
90-4-1106.	enacted	Ch. 162	HB 212
90-4-1107.	enacted	Ch. 162	HB 212
90-4-1108.	enacted	Ch. 162	HB 212
90-4-1109.	enacted	Ch. 162	HB 212
90-6-304	amended	Ch. 598	HB 700
90-6-331	amended	Ch. 598	HB 700
90-6-703	amended	Ch. 580	HB 11
90-6-710	amended	Ch. 580	HB 11
90-6-715	amended	Ch. 352	SB 124
	amended	Ch. 580	HB 11
90-6-1001.	enacted	Ch. 603	HB 758
90-10-101.	enacted	Ch. 537	SB 133
90-10-102.	enacted	Ch. 537	SB 133
90-10-103.	enacted	Ch. 537	SB 133
90-10-201.	enacted	Ch. 537	SB 133
90-10-202.	enacted	Ch. 537	SB 133
90-10-301.	enacted	Ch. 537	SB 133
90-10-302.	enacted	Ch. 537	SB 133
90-10-303.	enacted	Ch. 537	SB 133
90-10-304.	enacted	Ch. 537	SB 133
90-10-305.	enacted	Ch. 537	SB 133
90-10-306.	enacted	Ch. 537	SB 133
90-10-307.	enacted	Ch. 537	SB 133
90-10-308.	enacted	Ch. 537	SB 133
90-10-309.	enacted	Ch. 537	SB 133
90-10-310.	enacted	Ch. 537	SB 133

SESSION LAWS AFFECTED

<u>Laws Affected</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
Laws of 1987			
Ch. 598, sec. 12	repealed	50	HB 79
Laws of 1991			
Ch. 319, sec. 3	repealed	50	HB 79
Ch. 712, sec. 9	amended	569	SB 213
Laws of 1993			
Ch. 241, secs. 1, 2	repealed	50	HB 79
Ch. 511, sec. 6	repealed	322	HB 119
Laws of 1995			
Ch. 322, sec. 6	repealed	85	HB 308
Ch. 459, sec. 18	amended	235	SB 77
Ch. 476, secs. 9, 10	repealed	322	HB 119
Ch. 487, sec. 14	repealed	85	HB 308
Ch. 542, secs. 4, 5	amended	569	SB 213
Laws of 1997			
Ch. 195, sec. 8	repealed	406	SB 358
Ch. 411, sec. 1	amended	569	SB 213
Ch. 461, sec. 5	amended	57	HB 114
Laws of 1999			
Ch. 111, sec. 29	amended	320	HB 104
Ch. 285, secs. 27, 31	amended	531	SB 48
Ch. 424, sec. 10	repealed	319	HB 89
Ch. 512, sec. 19	amended	460	HB 18
Ch. 544, sec. 6	amended	235	SB 77
sec. 8	repealed	235	SB 77
Ch. 557, sec. 2	amended	560	HB 5
Laws of 2001			
Ch. 69, sec. 5	amended	460	HB 18
Ch. 95, secs. 2, 3, 4	repealed	322	HB 119
Ch. 181, sec. 29	repealed	289	HB 67
Ch. 196, sec. 6	repealed	48	HB 56
Ch. 216, sec. 9	repealed	235	SB 77
Ch. 270, sec. 6	amended	57	HB 114
Ch. 398, secs. 4, 5, 6, 7	amended	569	SB 213
Ch. 407, sec. 29	repealed	235	SB 77
Ch. 414, sec. 17	repealed	223	HB 301
Ch. 433, sec. 3	repealed	85	HB 308
Ch. 435, sec. 1	amended	580	HB 11
Ch. 447, sec. 6	repealed	434	HB 236
Ch. 516, sec. 8	amended	129	HB 463
Ch. 519, sec. 4	repealed	52	HB 82
Ch. 568, secs. 12, 13	amended	452	SB 293
	amended	525	HB 776
secs. 7, 9	repealed	525	HB 776
Ch. 573, sec. 2	amended	560	HB 5
Ch. 590, sec. 4	repealed	51	HB 81
Laws of 2003			
Ch. 81, sec. 4	amended	23	HB 90
Ch. 114, sec. 135	repealed	223	HB 301
Ch. 122, sec. 3	repealed	85	HB 308
Ch. 390, sec. 20	amended	606	SB 120

3287

Ch. 441, secs. 9, 10.....	amended	99	HB 598
Ch. 498, sec. 5.....	repealed	445	HB 536
Ch. 537, sec. 4.....	repealed	387	SB 138
Ch. 551, sec. 13.....	repealed	287	SB 324
Ch. 567, sec. 10.....	amended	169	HB 270
Ch. 577, sec. 5.....	amended	531	SB 48
Ch. 590, sec. 6.....	amended	338	HB 513
Ch. 592, sec. 50.....	amended	325	HB 170

Laws of 2005

Ch. 125, sec. 5.....	amended	272	HB 140
----------------------	---------	-----	--------

SENATE BILL TO CHAPTER NUMBER

<u>Bill Number</u>	<u>Chapter Number</u>	<u>Bill Number</u>	<u>Chapter Number</u>
SB 1.....	296	SB 93.....	380
SB 2.....	372	SB 94.....	118
SB 6.....	102	SB 95.....	236
SB 8.....	103	SB 98.....	135
SB 9.....	104	SB 99.....	119
SB 14.....	16	SB 100.....	120
SB 16.....	145	SB 103.....	201
SB 17.....	105	SB 104.....	297
SB 18.....	373	SB 105.....	202
SB 20.....	17	SB 106.....	121
SB 21.....	229	SB 107.....	561
SB 23.....	106	SB 108.....	448
SB 24.....	130	SB 110.....	350
SB 26.....	107	SB 114.....	562
SB 29.....	230	SB 115.....	563
SB 32.....	231	SB 116.....	298
SB 33.....	346	SB 117.....	136
SB 36.....	108	SB 118.....	381
SB 37.....	109	SB 119.....	382
SB 38.....	232	SB 120.....	606
SB 39.....	233	SB 121.....	383
SB 40.....	529	SB 122.....	351
SB 41.....	530	SB 123.....	384
SB 42.....	200	SB 124.....	352
SB 48.....	531	SB 126.....	237
SB 50.....	110	SB 127.....	353
SB 51.....	131	SB 129.....	203
SB 53.....	111	SB 130.....	204
SB 54.....	112	SB 131.....	385
SB 56.....	113	SB 132.....	122
SB 57.....	132	SB 133.....	537
SB 58.....	374	SB 134.....	205
SB 60.....	7	SB 135.....	206
SB 61.....	283	SB 136.....	207
SB 62.....	347	SB 137.....	386
SB 64.....	133	SB 138.....	387
SB 67.....	114	SB 139.....	564
SB 68.....	532	SB 140.....	354
SB 69.....	115	SB 141.....	123
SB 70.....	375	SB 143.....	355
SB 74.....	376	SB 145.....	356
SB 75.....	533	SB 146.....	449
SB 76.....	234	SB 152.....	208
SB 77.....	235	SB 154.....	565
SB 79.....	116	SB 160.....	357
SB 80.....	348	SB 162.....	209
SB 81.....	534	SB 164.....	388
SB 82.....	377	SB 165.....	210
SB 83.....	117	SB 166.....	137
SB 84.....	134	SB 167.....	566
SB 85.....	535	SB 169.....	124
SB 86.....	349	SB 170.....	138
SB 87.....	536	SB 171.....	139
SB 88.....	284	SB 174.....	358
SB 91.....	378	SB 175.....	567
SB 92.....	379	SB 178.....	211

SB 182.....	359	SB 317.....	214
SB 183.....	389	SB 320.....	403
SB 185.....	299	SB 322.....	246
SB 186.....	424	SB 323.....	454
SB 187.....	146	SB 324.....	287
SB 188.....	140	SB 325.....	247
SB 189.....	141	SB 326.....	544
SB 191.....	269	SB 328.....	404
SB 196.....	390	SB 329.....	248
SB 197.....	391	SB 333.....	405
SB 206.....	238	SB 335.....	249
SB 207.....	360	SB 339.....	573
SB 208.....	361	SB 340.....	455
SB 212.....	568	SB 342.....	574
SB 213.....	569	SB 345.....	545
SB 214.....	239	SB 347.....	250
SB 217.....	538	SB 349.....	251
SB 222.....	539	SB 350.....	252
SB 224.....	570	SB 352.....	253
SB 225.....	240	SB 355.....	254
SB 231.....	392	SB 356.....	144
SB 235.....	142	SB 358.....	406
SB 240.....	8	SB 359.....	215
SB 243.....	143	SB 363.....	255
SB 244.....	241	SB 365.....	256
SB 245.....	393	SB 368.....	257
SB 248.....	394	SB 369.....	258
SB 254.....	212	SB 370.....	259
SB 255.....	300	SB 373.....	260
SB 259.....	395	SB 375.....	217
SB 260.....	571	SB 380.....	456
SB 261.....	450	SB 381.....	364
SB 264.....	242	SB 384.....	370
SB 271.....	540	SB 388.....	407
SB 274.....	301	SB 401.....	575
SB 275.....	396	SB 406.....	408
SB 276.....	559	SB 407.....	546
SB 277.....	397	SB 410.....	261
SB 278.....	541	SB 412.....	303
SB 279.....	398	SB 415.....	457
SB 282.....	243	SB 423.....	547
SB 285.....	542	SB 426.....	423
SB 286.....	244	SB 428.....	548
SB 287.....	572	SB 432.....	549
SB 288.....	399	SB 433.....	304
SB 289.....	400	SB 434.....	409
SB 290.....	302	SB 435.....	410
SB 292.....	451	SB 440.....	365
SB 293.....	452	SB 442.....	550
SB 294.....	401	SB 443.....	576
SB 296.....	543	SB 445.....	577
SB 298.....	245	SB 451.....	262
SB 299.....	285	SB 452.....	411
SB 301.....	453	SB 454.....	125
SB 302.....	286	SB 457.....	263
SB 304.....	362	SB 458.....	412
SB 308.....	422	SB 459.....	366
SB 311.....	363	SB 460.....	264
SB 314.....	402	SB 461.....	578
SB 316.....	213	SB 466.....	413

SB 470.....	218
SB 472.....	414
SB 477.....	551
SB 478.....	265
SB 479.....	266
SB 480.....	415
SB 481.....	416
SB 486.....	552
SB 487.....	417
SB 489.....	425
SB 491.....	305
SB 497.....	267
SB 498.....	418
SB 499.....	553
SB 500.....	367
SB 503.....	419
SB 504.....	420
SB 507.....	458
SB 524.....	554
SB 525.....	371

HOUSE BILL TO CHAPTER NUMBER

<u>Bill Number</u>	<u>Chapter Number</u>	<u>Bill Number</u>	<u>Chapter Number</u>
HB 1.....	1	HB 83.....	463
HB 2.....	607	HB 84.....	3
HB 4.....	459	HB 85.....	318
HB 5.....	560	HB 86.....	53
HB 6.....	307	HB 87.....	22
HB 7.....	308	HB 88.....	152
HB 8.....	309	HB 89.....	319
HB 9.....	579	HB 90.....	23
HB 11.....	580	HB 97.....	54
HB 12.....	310	HB 99.....	583
HB 14.....	40	HB 100.....	153
HB 16.....	147	HB 101.....	24
HB 17.....	148	HB 102.....	464
HB 18.....	460	HB 103.....	154
HB 20.....	41	HB 104.....	320
HB 21.....	9	HB 105.....	271
HB 22.....	288	HB 107.....	25
HB 24.....	42	HB 108.....	14
HB 25.....	43	HB 109.....	321
HB 26.....	44	HB 110.....	55
HB 27.....	10	HB 112.....	56
HB 28.....	581	HB 113.....	155
HB 29.....	11	HB 114.....	57
HB 30.....	311	HB 115.....	584
HB 32.....	149	HB 116.....	58
HB 34.....	150	HB 118.....	15
HB 35.....	421	HB 119.....	322
HB 37.....	12	HB 126.....	26
HB 38.....	2	HB 127.....	27
HB 39.....	45	HB 128.....	28
HB 40.....	312	HB 131.....	59
HB 43.....	19	HB 138.....	60
HB 44.....	151	HB 139.....	61
HB 45.....	582	HB 140.....	272
HB 46.....	426	HB 142.....	323
HB 49.....	313	HB 144.....	62
HB 50.....	46	HB 146.....	465
HB 53.....	314	HB 147.....	63
HB 54.....	47	HB 150.....	219
HB 55.....	315	HB 153.....	220
HB 56.....	48	HB 154.....	64
HB 60.....	461	HB 155.....	65
HB 63.....	462	HB 156.....	290
HB 64.....	49	HB 157.....	66
HB 66.....	13	HB 158.....	67
HB 67.....	289	HB 159.....	466
HB 68.....	270	HB 160.....	68
HB 70.....	316	HB 161.....	69
HB 71.....	368	HB 162.....	156
HB 73.....	317	HB 167.....	273
HB 77.....	18	HB 168.....	29
HB 78.....	20	HB 169.....	324
HB 79.....	50	HB 170.....	325
HB 80.....	21	HB 171.....	30
HB 81.....	51	HB 172.....	585
HB 82.....	52	HB 173.....	326

MONTANA SESSION LAWS 2005

3292

HB 174.....	157	HB 272.....	556
HB 175.....	31	HB 273.....	82
HB 177.....	586	HB 274.....	37
HB 178.....	70	HB 275.....	171
HB 179.....	427	HB 280.....	222
HB 180.....	71	HB 281.....	172
HB 182.....	467	HB 283.....	193
HB 183.....	72	HB 285.....	83
HB 184.....	73	HB 288.....	473
HB 185.....	32	HB 295.....	291
HB 186.....	468	HB 297.....	275
HB 187.....	74	HB 298.....	84
HB 188.....	469	HB 299.....	330
HB 190.....	33	HB 300.....	38
HB 191.....	158	HB 301.....	223
HB 192.....	428	HB 302.....	437
HB 193.....	4	HB 306.....	173
HB 194.....	5	HB 307.....	276
HB 195.....	34	HB 308.....	85
HB 196.....	159	HB 312.....	86
HB 197.....	429	HB 313.....	87
HB 198.....	75	HB 316.....	224
HB 199.....	221	HB 317.....	438
HB 201.....	160	HB 318.....	174
HB 203.....	126	HB 321.....	175
HB 204.....	327	HB 324.....	331
HB 205.....	35	HB 326.....	277
HB 206.....	161	HB 327.....	474
HB 207.....	76	HB 331.....	475
HB 208.....	430	HB 332.....	439
HB 209.....	77	HB 345.....	440
HB 211.....	328	HB 346.....	332
HB 212.....	162	HB 347.....	88
HB 213.....	329	HB 348.....	441
HB 214.....	470	HB 349.....	442
HB 215.....	78	HB 350.....	89
HB 216.....	431	HB 351.....	476
HB 218.....	555	HB 354.....	90
HB 220.....	432	HB 363.....	292
HB 223.....	163	HB 367.....	557
HB 224.....	79	HB 370.....	127
HB 225.....	164	HB 371.....	176
HB 226.....	36	HB 374.....	477
HB 227.....	587	HB 379.....	278
HB 230.....	433	HB 381.....	39
HB 234.....	165	HB 385.....	478
HB 235.....	471	HB 386.....	479
HB 236.....	434	HB 395.....	480
HB 242.....	80	HB 396.....	306
HB 244.....	274	HB 397.....	91
HB 249.....	588	HB 400.....	92
HB 250.....	435	HB 401.....	93
HB 254.....	436	HB 406.....	279
HB 255.....	81	HB 409.....	177
HB 257.....	166	HB 411.....	481
HB 262.....	167	HB 414.....	482
HB 266.....	472	HB 418.....	483
HB 269.....	168	HB 420.....	178
HB 270.....	169	HB 421.....	484
HB 271.....	170	HB 423.....	485

HB 425.....	280	HB 591.....	340
HB 427.....	179	HB 592.....	594
HB 428.....	486	HB 598.....	99
HB 429.....	487	HB 606.....	505
HB 431.....	488	HB 607.....	189
HB 435.....	489	HB 609.....	100
HB 436.....	333	HB 612.....	101
HB 437.....	94	HB 615.....	506
HB 438.....	490	HB 624.....	190
HB 439.....	95	HB 628.....	294
HB 440.....	334	HB 631.....	191
HB 447.....	6	HB 636.....	192
HB 450.....	335	HB 638.....	194
HB 451.....	336	HB 643.....	268
HB 452.....	128	HB 645.....	507
HB 453.....	443	HB 652.....	508
HB 457.....	491	HB 653.....	195
HB 463.....	129	HB 660.....	196
HB 470.....	337	HB 666.....	341
HB 473.....	492	HB 667.....	595
HB 474.....	444	HB 668.....	281
HB 476.....	493	HB 671.....	596
HB 478.....	180	HB 678.....	509
HB 481.....	181	HB 681.....	510
HB 482.....	589	HB 684.....	342
HB 483.....	225	HB 687.....	511
HB 484.....	494	HB 688.....	216
HB 492.....	226	HB 689.....	597
HB 493.....	590	HB 696.....	512
HB 502.....	495	HB 698.....	343
HB 507.....	182	HB 700.....	598
HB 508.....	96	HB 701.....	513
HB 512.....	496	HB 702.....	197
HB 513.....	338	HB 704.....	514
HB 514.....	227	HB 707.....	515
HB 517.....	591	HB 709.....	199
HB 520.....	183	HB 713.....	599
HB 522.....	339	HB 720.....	516
HB 528.....	293	HB 721.....	282
HB 529.....	558	HB 726.....	517
HB 530.....	497	HB 728.....	600
HB 535.....	592	HB 732.....	518
HB 536.....	445	HB 737.....	519
HB 537.....	498	HB 738.....	520
HB 540.....	499	HB 740.....	601
HB 541.....	500	HB 742.....	447
HB 550.....	501	HB 743.....	198
HB 552.....	502	HB 745.....	295
HB 555.....	184	HB 746.....	228
HB 556.....	185	HB 747.....	521
HB 557.....	97	HB 748.....	522
HB 559.....	186	HB 749.....	523
HB 564.....	98	HB 756.....	524
HB 567.....	187	HB 757.....	602
HB 574.....	503	HB 758.....	603
HB 577.....	504	HB 759.....	344
HB 581.....	188	HB 761.....	604
HB 584.....	593	HB 769.....	605
HB 587.....	369	HB 772.....	345
HB 590.....	446	HB 776.....	525

MONTANA SESSION LAWS 2005

3294

HB 782.....	526
HB 790.....	527
HB 802.....	528

CHAPTER NUMBER TO BILL NUMBER

<u>Chapter Number</u>	<u>Bill Number</u>	<u>Chapter Number</u>	<u>Bill Number</u>
Ch. 1.....	HB 1	Ch. 57.....	HB 114
Ch. 2.....	HB 38	Ch. 58.....	HB 116
Ch. 3.....	HB 84	Ch. 59.....	HB 131
Ch. 4.....	HB 193	Ch. 60.....	HB 138
Ch. 5.....	HB 194	Ch. 61.....	HB 139
Ch. 6.....	HB 447	Ch. 62.....	HB 144
Ch. 7.....	SB 60	Ch. 63.....	HB 147
Ch. 8.....	SB 240	Ch. 64.....	HB 154
Ch. 9.....	HB 21	Ch. 65.....	HB 155
Ch. 10.....	HB 27	Ch. 66.....	HB 157
Ch. 11.....	HB 29	Ch. 67.....	HB 158
Ch. 12.....	HB 37	Ch. 68.....	HB 160
Ch. 13.....	HB 66	Ch. 69.....	HB 161
Ch. 14.....	HB 108	Ch. 70.....	HB 178
Ch. 15.....	HB 118	Ch. 71.....	HB 180
Ch. 16.....	SB 14	Ch. 72.....	HB 183
Ch. 17.....	SB 20	Ch. 73.....	HB 184
Ch. 18.....	HB 77	Ch. 74.....	HB 187
Ch. 19.....	HB 43	Ch. 75.....	HB 198
Ch. 20.....	HB 78	Ch. 76.....	HB 207
Ch. 21.....	HB 80	Ch. 77.....	HB 209
Ch. 22.....	HB 87	Ch. 78.....	HB 215
Ch. 23.....	HB 90	Ch. 79.....	HB 224
Ch. 24.....	HB 101	Ch. 80.....	HB 242
Ch. 25.....	HB 107	Ch. 81.....	HB 255
Ch. 26.....	HB 126	Ch. 82.....	HB 273
Ch. 27.....	HB 127	Ch. 83.....	HB 285
Ch. 28.....	HB 128	Ch. 84.....	HB 298
Ch. 29.....	HB 168	Ch. 85.....	HB 308
Ch. 30.....	HB 171	Ch. 86.....	HB 312
Ch. 31.....	HB 175	Ch. 87.....	HB 313
Ch. 32.....	HB 185	Ch. 88.....	HB 347
Ch. 33.....	HB 190	Ch. 89.....	HB 350
Ch. 34.....	HB 195	Ch. 90.....	HB 354
Ch. 35.....	HB 205	Ch. 91.....	HB 397
Ch. 36.....	HB 226	Ch. 92.....	HB 400
Ch. 37.....	HB 274	Ch. 93.....	HB 401
Ch. 38.....	HB 300	Ch. 94.....	HB 437
Ch. 39.....	HB 381	Ch. 95.....	HB 439
Ch. 40.....	HB 14	Ch. 96.....	HB 508
Ch. 41.....	HB 20	Ch. 97.....	HB 557
Ch. 42.....	HB 24	Ch. 98.....	HB 564
Ch. 43.....	HB 25	Ch. 99.....	HB 598
Ch. 44.....	HB 26	Ch. 100.....	HB 609
Ch. 45.....	HB 39	Ch. 101.....	HB 612
Ch. 46.....	HB 50	Ch. 102.....	SB 6
Ch. 47.....	HB 54	Ch. 103.....	SB 8
Ch. 48.....	HB 56	Ch. 104.....	SB 9
Ch. 49.....	HB 64	Ch. 105.....	SB 17
Ch. 50.....	HB 79	Ch. 106.....	SB 23
Ch. 51.....	HB 81	Ch. 107.....	SB 26
Ch. 52.....	HB 82	Ch. 108.....	SB 36
Ch. 53.....	HB 86	Ch. 109.....	SB 37
Ch. 54.....	HB 97	Ch. 110.....	SB 50
Ch. 55.....	HB 110	Ch. 111.....	SB 53
Ch. 56.....	HB 112	Ch. 112.....	SB 54

MONTANA SESSION LAWS 2005

3296

Ch. 113.....	SB	56	Ch. 173.....	HB	306
Ch. 114.....	SB	67	Ch. 174.....	HB	318
Ch. 115.....	SB	69	Ch. 175.....	HB	321
Ch. 116.....	SB	79	Ch. 176.....	HB	371
Ch. 117.....	SB	83	Ch. 177.....	HB	409
Ch. 118.....	SB	94	Ch. 178.....	HB	420
Ch. 119.....	SB	99	Ch. 179.....	HB	427
Ch. 120.....	SB	100	Ch. 180.....	HB	478
Ch. 121.....	SB	106	Ch. 181.....	HB	481
Ch. 122.....	SB	132	Ch. 182.....	HB	507
Ch. 123.....	SB	141	Ch. 183.....	HB	520
Ch. 124.....	SB	169	Ch. 184.....	HB	555
Ch. 125.....	SB	454	Ch. 185.....	HB	556
Ch. 126.....	HB	203	Ch. 186.....	HB	559
Ch. 127.....	HB	370	Ch. 187.....	HB	567
Ch. 128.....	HB	452	Ch. 188.....	HB	581
Ch. 129.....	HB	463	Ch. 189.....	HB	607
Ch. 130.....	SB	24	Ch. 190.....	HB	624
Ch. 131.....	SB	51	Ch. 191.....	HB	631
Ch. 132.....	SB	57	Ch. 192.....	HB	636
Ch. 133.....	SB	64	Ch. 193.....	HB	283
Ch. 134.....	SB	84	Ch. 194.....	HB	638
Ch. 135.....	SB	98	Ch. 195.....	HB	653
Ch. 136.....	SB	117	Ch. 196.....	HB	660
Ch. 137.....	SB	166	Ch. 197.....	HB	702
Ch. 138.....	SB	170	Ch. 198.....	HB	743
Ch. 139.....	SB	171	Ch. 199.....	HB	709
Ch. 140.....	SB	188	Ch. 200.....	SB	42
Ch. 141.....	SB	189	Ch. 201.....	SB	103
Ch. 142.....	SB	235	Ch. 202.....	SB	105
Ch. 143.....	SB	243	Ch. 203.....	SB	129
Ch. 144.....	SB	356	Ch. 204.....	SB	130
Ch. 145.....	SB	16	Ch. 205.....	SB	134
Ch. 146.....	SB	187	Ch. 206.....	SB	135
Ch. 147.....	HB	16	Ch. 207.....	SB	136
Ch. 148.....	HB	17	Ch. 208.....	SB	152
Ch. 149.....	HB	32	Ch. 209.....	SB	162
Ch. 150.....	HB	34	Ch. 210.....	SB	165
Ch. 151.....	HB	44	Ch. 211.....	SB	178
Ch. 152.....	HB	88	Ch. 212.....	SB	254
Ch. 153.....	HB	100	Ch. 213.....	SB	316
Ch. 154.....	HB	103	Ch. 214.....	SB	317
Ch. 155.....	HB	113	Ch. 215.....	SB	359
Ch. 156.....	HB	162	Ch. 216.....	HB	688
Ch. 157.....	HB	174	Ch. 217.....	SB	375
Ch. 158.....	HB	191	Ch. 218.....	SB	470
Ch. 159.....	HB	196	Ch. 219.....	HB	150
Ch. 160.....	HB	201	Ch. 220.....	HB	153
Ch. 161.....	HB	206	Ch. 221.....	HB	199
Ch. 162.....	HB	212	Ch. 222.....	HB	280
Ch. 163.....	HB	223	Ch. 223.....	HB	301
Ch. 164.....	HB	225	Ch. 224.....	HB	316
Ch. 165.....	HB	234	Ch. 225.....	HB	483
Ch. 166.....	HB	257	Ch. 226.....	HB	492
Ch. 167.....	HB	262	Ch. 227.....	HB	514
Ch. 168.....	HB	269	Ch. 228.....	HB	746
Ch. 169.....	HB	270	Ch. 229.....	SB	21
Ch. 170.....	HB	271	Ch. 230.....	SB	29
Ch. 171.....	HB	275	Ch. 231.....	SB	32
Ch. 172.....	HB	281	Ch. 232.....	SB	38

Ch. 233.....	SB	39	Ch. 293.....	HB	528
Ch. 234.....	SB	76	Ch. 294.....	HB	628
Ch. 235.....	SB	77	Ch. 295.....	HB	745
Ch. 236.....	SB	95	Ch. 296.....	SB	1
Ch. 237.....	SB	126	Ch. 297.....	SB	104
Ch. 238.....	SB	206	Ch. 298.....	SB	116
Ch. 239.....	SB	214	Ch. 299.....	SB	185
Ch. 240.....	SB	225	Ch. 300.....	SB	255
Ch. 241.....	SB	244	Ch. 301.....	SB	274
Ch. 242.....	SB	264	Ch. 302.....	SB	290
Ch. 243.....	SB	282	Ch. 303.....	SB	412
Ch. 244.....	SB	286	Ch. 304.....	SB	433
Ch. 245.....	SB	298	Ch. 305.....	SB	491
Ch. 246.....	SB	322	Ch. 306.....	HB	396
Ch. 247.....	SB	325	Ch. 307.....	HB	6
Ch. 248.....	SB	329	Ch. 308.....	HB	7
Ch. 249.....	SB	335	Ch. 309.....	HB	8
Ch. 250.....	SB	347	Ch. 310.....	HB	12
Ch. 251.....	SB	349	Ch. 311.....	HB	30
Ch. 252.....	SB	350	Ch. 312.....	HB	40
Ch. 253.....	SB	352	Ch. 313.....	HB	49
Ch. 254.....	SB	355	Ch. 314.....	HB	53
Ch. 255.....	SB	363	Ch. 315.....	HB	55
Ch. 256.....	SB	365	Ch. 316.....	HB	70
Ch. 257.....	SB	368	Ch. 317.....	HB	73
Ch. 258.....	SB	369	Ch. 318.....	HB	85
Ch. 259.....	SB	370	Ch. 319.....	HB	89
Ch. 260.....	SB	373	Ch. 320.....	HB	104
Ch. 261.....	SB	410	Ch. 321.....	HB	109
Ch. 262.....	SB	451	Ch. 322.....	HB	119
Ch. 263.....	SB	457	Ch. 323.....	HB	142
Ch. 264.....	SB	460	Ch. 324.....	HB	169
Ch. 265.....	SB	478	Ch. 325.....	HB	170
Ch. 266.....	SB	479	Ch. 326.....	HB	173
Ch. 267.....	SB	497	Ch. 327.....	HB	204
Ch. 268.....	HB	643	Ch. 328.....	HB	211
Ch. 269.....	SB	191	Ch. 329.....	HB	213
Ch. 270.....	HB	68	Ch. 330.....	HB	299
Ch. 271.....	HB	105	Ch. 331.....	HB	324
Ch. 272.....	HB	140	Ch. 332.....	HB	346
Ch. 273.....	HB	167	Ch. 333.....	HB	436
Ch. 274.....	HB	244	Ch. 334.....	HB	440
Ch. 275.....	HB	297	Ch. 335.....	HB	450
Ch. 276.....	HB	307	Ch. 336.....	HB	451
Ch. 277.....	HB	326	Ch. 337.....	HB	470
Ch. 278.....	HB	379	Ch. 338.....	HB	513
Ch. 279.....	HB	406	Ch. 339.....	HB	522
Ch. 280.....	HB	425	Ch. 340.....	HB	591
Ch. 281.....	HB	668	Ch. 341.....	HB	666
Ch. 282.....	HB	721	Ch. 342.....	HB	684
Ch. 283.....	SB	61	Ch. 343.....	HB	698
Ch. 284.....	SB	88	Ch. 344.....	HB	759
Ch. 285.....	SB	299	Ch. 345.....	HB	772
Ch. 286.....	SB	302	Ch. 346.....	SB	33
Ch. 287.....	SB	324	Ch. 347.....	SB	62
Ch. 288.....	HB	22	Ch. 348.....	SB	80
Ch. 289.....	HB	67	Ch. 349.....	SB	86
Ch. 290.....	HB	156	Ch. 350.....	SB	110
Ch. 291.....	HB	295	Ch. 351.....	SB	122
Ch. 292.....	HB	363	Ch. 352.....	SB	124

MONTANA SESSION LAWS 2005

3298

Ch. 353.....	SB	127	Ch. 413.....	SB	466
Ch. 354.....	SB	140	Ch. 414.....	SB	472
Ch. 355.....	SB	143	Ch. 415.....	SB	480
Ch. 356.....	SB	145	Ch. 416.....	SB	481
Ch. 357.....	SB	160	Ch. 417.....	SB	487
Ch. 358.....	SB	174	Ch. 418.....	SB	498
Ch. 359.....	SB	182	Ch. 419.....	SB	503
Ch. 360.....	SB	207	Ch. 420.....	SB	504
Ch. 361.....	SB	208	Ch. 421.....	HB	35
Ch. 362.....	SB	304	Ch. 422.....	SB	308
Ch. 363.....	SB	311	Ch. 423.....	SB	426
Ch. 364.....	SB	381	Ch. 424.....	SB	186
Ch. 365.....	SB	440	Ch. 425.....	SB	489
Ch. 366.....	SB	459	Ch. 426.....	HB	46
Ch. 367.....	SB	500	Ch. 427.....	HB	179
Ch. 368.....	HB	71	Ch. 428.....	HB	192
Ch. 369.....	HB	587	Ch. 429.....	HB	197
Ch. 370.....	SB	384	Ch. 430.....	HB	208
Ch. 371.....	SB	525	Ch. 431.....	HB	216
Ch. 372.....	SB	2	Ch. 432.....	HB	220
Ch. 373.....	SB	18	Ch. 433.....	HB	230
Ch. 374.....	SB	58	Ch. 434.....	HB	236
Ch. 375.....	SB	70	Ch. 435.....	HB	250
Ch. 376.....	SB	74	Ch. 436.....	HB	254
Ch. 377.....	SB	82	Ch. 437.....	HB	302
Ch. 378.....	SB	91	Ch. 438.....	HB	317
Ch. 379.....	SB	92	Ch. 439.....	HB	332
Ch. 380.....	SB	93	Ch. 440.....	HB	345
Ch. 381.....	SB	118	Ch. 441.....	HB	348
Ch. 382.....	SB	119	Ch. 442.....	HB	349
Ch. 383.....	SB	121	Ch. 443.....	HB	453
Ch. 384.....	SB	123	Ch. 444.....	HB	474
Ch. 385.....	SB	131	Ch. 445.....	HB	536
Ch. 386.....	SB	137	Ch. 446.....	HB	590
Ch. 387.....	SB	138	Ch. 447.....	HB	742
Ch. 388.....	SB	164	Ch. 448.....	SB	108
Ch. 389.....	SB	183	Ch. 449.....	SB	146
Ch. 390.....	SB	196	Ch. 450.....	SB	261
Ch. 391.....	SB	197	Ch. 451.....	SB	292
Ch. 392.....	SB	231	Ch. 452.....	SB	293
Ch. 393.....	SB	245	Ch. 453.....	SB	301
Ch. 394.....	SB	248	Ch. 454.....	SB	323
Ch. 395.....	SB	259	Ch. 455.....	SB	340
Ch. 396.....	SB	275	Ch. 456.....	SB	380
Ch. 397.....	SB	277	Ch. 457.....	SB	415
Ch. 398.....	SB	279	Ch. 458.....	SB	507
Ch. 399.....	SB	288	Ch. 459.....	HB	4
Ch. 400.....	SB	289	Ch. 460.....	HB	18
Ch. 401.....	SB	294	Ch. 461.....	HB	60
Ch. 402.....	SB	314	Ch. 462.....	HB	63
Ch. 403.....	SB	320	Ch. 463.....	HB	83
Ch. 404.....	SB	328	Ch. 464.....	HB	102
Ch. 405.....	SB	333	Ch. 465.....	HB	146
Ch. 406.....	SB	358	Ch. 466.....	HB	159
Ch. 407.....	SB	388	Ch. 467.....	HB	182
Ch. 408.....	SB	406	Ch. 468.....	HB	186
Ch. 409.....	SB	434	Ch. 469.....	HB	188
Ch. 410.....	SB	435	Ch. 470.....	HB	214
Ch. 411.....	SB	452	Ch. 471.....	HB	235
Ch. 412.....	SB	458	Ch. 472.....	HB	266

Ch. 473.....	HB 288	Ch. 533.....	SB 75
Ch. 474.....	HB 327	Ch. 534.....	SB 81
Ch. 475.....	HB 331	Ch. 535.....	SB 85
Ch. 476.....	HB 351	Ch. 536.....	SB 87
Ch. 477.....	HB 374	Ch. 537.....	SB 133
Ch. 478.....	HB 385	Ch. 538.....	SB 217
Ch. 479.....	HB 386	Ch. 539.....	SB 222
Ch. 480.....	HB 395	Ch. 540.....	SB 271
Ch. 481.....	HB 411	Ch. 541.....	SB 278
Ch. 482.....	HB 414	Ch. 542.....	SB 285
Ch. 483.....	HB 418	Ch. 543.....	SB 296
Ch. 484.....	HB 421	Ch. 544.....	SB 326
Ch. 485.....	HB 423	Ch. 545.....	SB 345
Ch. 486.....	HB 428	Ch. 546.....	SB 407
Ch. 487.....	HB 429	Ch. 547.....	SB 423
Ch. 488.....	HB 431	Ch. 548.....	SB 428
Ch. 489.....	HB 435	Ch. 549.....	SB 432
Ch. 490.....	HB 438	Ch. 550.....	SB 442
Ch. 491.....	HB 457	Ch. 551.....	SB 477
Ch. 492.....	HB 473	Ch. 552.....	SB 486
Ch. 493.....	HB 476	Ch. 553.....	SB 499
Ch. 494.....	HB 484	Ch. 554.....	SB 524
Ch. 495.....	HB 502	Ch. 555.....	HB 218
Ch. 496.....	HB 512	Ch. 556.....	HB 272
Ch. 497.....	HB 530	Ch. 557.....	HB 367
Ch. 498.....	HB 537	Ch. 558.....	HB 529
Ch. 499.....	HB 540	Ch. 559.....	SB 276
Ch. 500.....	HB 541	Ch. 560.....	HB 5
Ch. 501.....	HB 550	Ch. 561.....	SB 107
Ch. 502.....	HB 552	Ch. 562.....	SB 114
Ch. 503.....	HB 574	Ch. 563.....	SB 115
Ch. 504.....	HB 577	Ch. 564.....	SB 139
Ch. 505.....	HB 606	Ch. 565.....	SB 154
Ch. 506.....	HB 615	Ch. 566.....	SB 167
Ch. 507.....	HB 645	Ch. 567.....	SB 175
Ch. 508.....	HB 652	Ch. 568.....	SB 212
Ch. 509.....	HB 678	Ch. 569.....	SB 213
Ch. 510.....	HB 681	Ch. 570.....	SB 224
Ch. 511.....	HB 687	Ch. 571.....	SB 260
Ch. 512.....	HB 696	Ch. 572.....	SB 287
Ch. 513.....	HB 701	Ch. 573.....	SB 339
Ch. 514.....	HB 704	Ch. 574.....	SB 342
Ch. 515.....	HB 707	Ch. 575.....	SB 401
Ch. 516.....	HB 720	Ch. 576.....	SB 443
Ch. 517.....	HB 726	Ch. 577.....	SB 445
Ch. 518.....	HB 732	Ch. 578.....	SB 461
Ch. 519.....	HB 737	Ch. 579.....	HB 9
Ch. 520.....	HB 738	Ch. 580.....	HB 11
Ch. 521.....	HB 747	Ch. 581.....	HB 28
Ch. 522.....	HB 748	Ch. 582.....	HB 45
Ch. 523.....	HB 749	Ch. 583.....	HB 99
Ch. 524.....	HB 756	Ch. 584.....	HB 115
Ch. 525.....	HB 776	Ch. 585.....	HB 172
Ch. 526.....	HB 782	Ch. 586.....	HB 177
Ch. 527.....	HB 790	Ch. 587.....	HB 227
Ch. 528.....	HB 802	Ch. 588.....	HB 249
Ch. 529.....	SB 40	Ch. 589.....	HB 482
Ch. 530.....	SB 41	Ch. 590.....	HB 493
Ch. 531.....	SB 48	Ch. 591.....	HB 517
Ch. 532.....	SB 68	Ch. 592.....	HB 535

MONTANA SESSION LAWS 2005

3300

Ch. 593.....	HB	584
Ch. 594.....	HB	592
Ch. 595.....	HB	667
Ch. 596.....	HB	671
Ch. 597.....	HB	689
Ch. 598.....	HB	700
Ch. 599.....	HB	713
Ch. 600.....	HB	728
Ch. 601.....	HB	740
Ch. 602.....	HB	757
Ch. 603.....	HB	758
Ch. 604.....	HB	761
Ch. 605.....	HB	769
Ch. 606.....	SB	120
Ch. 607.....	HB	2

EFFECTIVE DATES BY CHAPTER NUMBER

<u>Chapter Number</u>	<u>Bill Number</u>	<u>Effective Date</u>
Ch. 1	HB 1	01/31/2005
Ch. 2	HB 38	02/23/2005
Ch. 3	HB 84	02/23/2005
Ch. 4	HB 193	02/23/2005
Ch. 5	HB 194	02/23/2005
Ch. 6	HB 447	07/01/2005
Ch. 7	SB 60	02/23/2005
Ch. 8	SB 240	02/23/2005
Ch. 9	HB 21	03/15/2005
Ch. 10	HB 27	03/15/2005
Ch. 11	HB 29	10/01/2005
Ch. 12	HB 37	03/15/2005
Ch. 13	HB 66	10/01/2005
Ch. 14	HB 108	03/15/2005
Ch. 15	HB 118	10/01/2005
Ch. 16	SB 14	10/01/2005
Ch. 17	SB 20	10/01/2005
Ch. 18	HB 77	07/01/2005
Ch. 19	HB 43	07/01/2006
Ch. 20	HB 78	03/18/2005
Ch. 21	HB 80	03/18/2005
Ch. 22	HB 87	01/01/2006
Ch. 23	HB 90	10/01/2005
Ch. 24	HB 101	10/01/2005
Ch. 25	HB 107	10/01/2005
Ch. 26	HB 126	07/01/2005
Ch. 27	HB 127	01/01/2006
Ch. 28	HB 128	10/01/2005
Ch. 29	HB 168	03/18/2005
Ch. 30	HB 171	03/18/2005
Ch. 31	HB 175	07/01/2005
Ch. 32	HB 185	03/18/2005
Ch. 33	HB 190	03/18/2005
Ch. 34	HB 195	03/18/2005
Ch. 35	HB 205	07/01/2005
Ch. 36	HB 226	10/01/2005
Ch. 37	HB 274	03/18/2005
Ch. 38	HB 300	10/01/2005
Ch. 39	HB 381	10/01/2005
Ch. 40	HB 14	03/24/2005
Ch. 41	HB 20	03/24/2005
Ch. 42	HB 24	07/01/2005
Ch. 43	HB 25	07/01/2005
Ch. 44	HB 26	07/01/2005
Ch. 45	HB 39	10/01/2005
Ch. 46	HB 50	03/24/2005
Ch. 47	HB 54	10/01/2005
Ch. 48	HB 56	10/01/2005
Ch. 49	HB 64	07/01/2005
Ch. 50	HB 79	03/24/2005
Ch. 51	HB 81	03/24/2005
Ch. 52	HB 82	03/24/2005
Ch. 53	HB 86	07/01/2005
Ch. 54	HB 97	10/01/2005
Ch. 55	HB 110	10/01/2005
Ch. 56	HB 112	03/24/2005
Ch. 57	HB 114	10/01/2005
Ch. 58	HB 116	07/01/2005

MONTANA SESSION LAWS 2005

3302

Ch. 59	HB 131	10/01/2005
Ch. 60	HB 138	10/01/2005
Ch. 61	HB 139	10/01/2005
Ch. 62	HB 144	03/24/2005
Ch. 63	HB 147	03/24/2005
Ch. 64	HB 154	10/01/2005
Ch. 65	HB 155	10/01/2005
Ch. 66	HB 157	07/01/2005
Ch. 67	HB 158	03/24/2005
Ch. 68	HB 160	03/24/2005
Ch. 69	HB 161	03/24/2005
§§ 4, 6, and 17		
§§ 1-3, 5, and 7-16		
Ch. 70	HB 178	03/24/2005
Ch. 71	HB 180	10/01/2005
Ch. 72	HB 183	10/01/2005
Ch. 73	HB 184	10/01/2005
Ch. 74	HB 187	03/24/2005
Ch. 75	HB 198	03/24/2005
Ch. 76	HB 207	03/24/2005
Ch. 77	HB 209	03/24/2005
Ch. 78	HB 215	03/24/2005
Ch. 79	HB 224	10/01/2005
Ch. 80	HB 242	03/24/2005
Ch. 81	HB 255	10/01/2005
Ch. 82	HB 273	03/24/2005
Ch. 83	HB 285	10/01/2005
Ch. 84	HB 298	03/24/2005
Ch. 85	HB 308	03/24/2005
Ch. 86	HB 312	03/24/2005
Ch. 87	HB 313	10/01/2005
Ch. 88	HB 347	03/24/2005
Ch. 89	HB 350	03/24/2005
Ch. 90	HB 354	10/01/2005
Ch. 91	HB 397	03/24/2005
Ch. 92	HB 400	07/01/2005
Ch. 93	HB 401	10/01/2005
Ch. 94	HB 437	10/01/2005
Ch. 95	HB 439	10/01/2005
Ch. 96	HB 508	10/01/2005
Ch. 97	HB 557	10/01/2005
Ch. 98	HB 564	03/24/2005
Ch. 99	HB 598	03/24/2005
Ch. 100	HB 609	03/24/2005
Ch. 101	HB 612	10/01/2005
Ch. 102	SB 6	03/24/2005
Ch. 103	SB 8	07/01/2005
Ch. 104	SB 9	10/01/2005
Ch. 105	SB 17	03/24/2005
Ch. 106	SB 23	10/01/2005
Ch. 107	SB 26	03/24/2005
Ch. 108	SB 36	10/01/2005
Ch. 109	SB 37	10/01/2005
Ch. 110	SB 50	03/24/2005
Ch. 111	SB 53	03/24/2005
Ch. 112	SB 54	03/24/2005
Ch. 113	SB 56	10/01/2005
Ch. 114	SB 67	07/01/2005
Ch. 115	SB 69	03/24/2005
Ch. 116	SB 79	01/01/2006
Ch. 117	SB 83	03/24/2005
Ch. 118	SB 94	10/01/2005
Ch. 119	SB 99	10/01/2005
Ch. 120	SB 100	10/01/2005

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 121	SB	106	07/01/2005
Ch. 122	SB	132	03/24/2005
Ch. 123	SB	141	10/01/2005
Ch. 124	SB	169	10/01/2005
Ch. 125	SB	454	03/24/2005
Ch. 126	HB	203	07/01/2005
Ch. 127	HB	370	03/30/2005
Ch. 128	HB	452	03/30/2005
Ch. 129	HB	463	03/30/2005
Ch. 130	SB	24	10/01/2005
Ch. 131	SB	51	03/30/2005
Ch. 132	SB	57	07/01/2005
Ch. 133	SB	64	03/30/2005
Ch. 134	SB	84	07/01/2005
Ch. 135	SB	98	07/01/2005
Ch. 136	SB	117	10/01/2005
Ch. 137	SB	166	03/30/2005
Ch. 138	SB	170	07/01/2005
Ch. 139	SB	171	10/01/2005
Ch. 140	SB	188	03/30/2005
Ch. 141	SB	189	03/30/2005
Ch. 142	SB	235	03/30/2005
Ch. 143	SB	243	03/30/2005
Ch. 144	SB	356	10/01/2005
Ch. 145	SB	16	10/01/2005
Ch. 146	SB	187	03/30/2005
Ch. 147	HB	16	07/01/2005
Ch. 148	HB	17	04/07/2005
Ch. 149	HB	32	04/08/2005
Ch. 150	HB	34	04/08/2005
Ch. 151	HB	44	04/08/2005
Ch. 152	HB	88	04/08/2005
Ch. 153	HB	100	10/01/2005
Ch. 154	HB	103	10/01/2005
Ch. 155	HB	113	04/07/2005
Ch. 156	HB	162	10/01/2005
Ch. 157	HB	174	04/08/2005
Ch. 158	HB	191	04/08/2005
Ch. 159	HB	196	10/01/2005
Ch. 160	HB	201	04/08/2005
§§ 2-4			
§ 1			
Ch. 161	HB	206	07/01/2005
Ch. 162	HB	212	04/07/2005
Ch. 163	HB	223	10/01/2005
Ch. 164	HB	225	04/07/2005
Ch. 165	HB	234	04/07/2005
Ch. 166	HB	257	10/01/2005
Ch. 167	HB	262	10/01/2005
Ch. 168	HB	269	04/07/2005
Ch. 169	HB	270	04/08/2005
Ch. 170	HB	271	04/08/2005
Ch. 171	HB	275	10/01/2005
Ch. 172	HB	281	10/01/2005
Ch. 173	HB	306	10/01/2005
Ch. 174	HB	318	04/08/2005
Ch. 175	HB	321	10/01/2005
Ch. 176	HB	371	04/07/2005
Ch. 177	HB	409	10/01/2005
Ch. 178	HB	420	10/01/2005
Ch. 179	HB	427	10/01/2005
Ch. 180	HB	478	10/01/2005
Ch. 181	HB	481	07/01/2005
Ch. 182	HB	507	10/01/2005

MONTANA SESSION LAWS 2005

3304

Ch. 183	HB 520	04/07/2005
Ch. 184	HB 555	07/01/2006
Ch. 185	HB 556	10/01/2005
Ch. 186	HB 559	10/01/2005
Ch. 187	HB 567	10/01/2005
Ch. 188	HB 581	07/01/2005
Ch. 189	HB 607	04/08/2005
Ch. 190	HB 624	04/08/2005
Ch. 191	HB 631	07/01/2005
Ch. 192	HB 636	10/01/2005
Ch. 193	HB 283	04/07/2005
Ch. 194	HB 638	04/07/2005
Ch. 195	HB 653	10/01/2005
Ch. 196	HB 660	10/01/2005
Ch. 197	HB 702	10/01/2005
Ch. 198	HB 743	10/01/2005
Ch. 199	HB 709	07/01/2005
Ch. 200	SB 42	10/01/2005
Ch. 201	SB 103	10/01/2005
Ch. 202	SB 105	04/08/2005
Ch. 203	SB 129	10/01/2005
Ch. 204	SB 130	07/01/2005
Ch. 205	SB 134	10/01/2005
Ch. 206	SB 135	07/01/2005
Ch. 207	SB 136	10/01/2005
Ch. 208	SB 152	04/07/2005
Ch. 209	SB 162	04/08/2005
Ch. 210	SB 165	10/01/2005
Ch. 211	SB 178	04/07/2005
Ch. 212	SB 254	10/01/2005
Ch. 213	SB 316	07/01/2005
Ch. 214	SB 317	04/08/2005
Ch. 215	SB 359	07/01/2005
Ch. 216	HB 688	04/10/2005
Ch. 217	SB 375	04/13/2005
Ch. 218	SB 470	04/14/2005
Ch. 219	HB 150	10/01/2005
Ch. 220	HB 153	04/15/2005
Ch. 221	HB 199	04/15/2005
Ch. 222	HB 280	07/01/2005
Ch. 223	HB 301	07/01/2005
§§ 6-9 and 11-13		
§§ 1-5 and 10		12/31/2006
Ch. 224	HB 316	07/01/2005
Ch. 225	HB 483	07/01/2005
Ch. 226	HB 492	04/15/2005
Ch. 227	HB 514	04/15/2005
Ch. 228	HB 746	10/01/2005
Ch. 229	SB 21	07/01/2005
Ch. 230	SB 29	07/01/2005
Ch. 231	SB 32	10/01/2005
Ch. 232	SB 38	10/01/2005
Ch. 233	SB 39	10/01/2005
Ch. 234	SB 76	04/15/2005
Ch. 235	SB 77	04/15/2005
Ch. 236	SB 95	01/01/2006
Ch. 237	SB 126	07/01/2005
Ch. 238	SB 206	04/15/2005
Ch. 239	SB 214	10/01/2005
Ch. 240	SB 225	04/15/2005
Ch. 241	SB 244	05/01/2005
Ch. 242	SB 264	04/15/2005
Ch. 243	SB 282	10/01/2005
Ch. 244	SB 286	10/01/2005

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 245	SB	298	04/15/2005
Ch. 246	SB	322	07/01/2005
Ch. 247	SB	325	10/01/2005
Ch. 248	SB	329	10/01/2005
Ch. 249	SB	335	10/01/2005
Ch. 250	SB	347	10/01/2005
Ch. 251	SB	349	10/01/2005
Ch. 252	SB	350	10/01/2005
Ch. 253	SB	352	07/01/2005
Ch. 254	SB	355	04/15/2005
Ch. 255	SB	363	07/01/2005
Ch. 256	SB	365	04/15/2005
Ch. 257	SB	368	04/15/2005
Ch. 258	SB	369	10/01/2005
Ch. 259	SB	370	07/01/2005
Ch. 260	SB	373	04/15/2005
Ch. 261	SB	410	04/15/2005
Ch. 262	SB	451	10/01/2005
Ch. 263	SB	457	10/01/2005
Ch. 264	SB	460	04/15/2005
Ch. 265	SB	478	04/15/2005
Ch. 266	SB	479	10/01/2005
Ch. 267	SB	497	04/15/2005
Ch. 268	HB	643	10/01/2005
Ch. 269	SB	191	07/01/2007
Upon approval by electorate			
Ch. 270	HB	68	10/01/2005
Ch. 271	HB	105	10/01/2005
Ch. 272	HB	140	04/19/2005
Ch. 273	HB	167	10/01/2005
Ch. 274	HB	244	10/01/2005
Ch. 275	HB	297	10/01/2005
Ch. 276	HB	307	10/01/2005
Ch. 277	HB	326	10/01/2005
Ch. 278	HB	379	07/01/2005
Ch. 279	HB	406	04/19/2005
§ 3(1) and 9			
§§ 1, 2, 3(2)-(5), and 4-8.			
Ch. 280	HB	425	10/01/2006
Ch. 281	HB	668	07/01/2005
Ch. 282	HB	721	04/19/2005
Ch. 283	SB	61	04/18/2005
Ch. 284	SB	88	07/01/2005
Ch. 285	SB	299	10/01/2005
Ch. 286	SB	302	07/01/2005
§§ 2 and 7-21			
§§ 1 and 3-6			
Ch. 287	SB	324	07/01/2005
Ch. 288	HB	22	07/01/2005
Ch. 289	HB	67	07/01/2005
Ch. 290	HB	156	01/01/2006
Ch. 291	HB	295	10/01/2005
Ch. 292	HB	363	10/01/2005
Ch. 293	HB	528	04/20/2005
Ch. 294	HB	628	04/19/2005
Ch. 295	HB	745	04/20/2005
Ch. 296	SB	1	10/01/2005
Ch. 297	SB	104	07/01/2006
Ch. 298	SB	116	04/19/2005
Ch. 299	SB	185	04/19/2005
Ch. 300	SB	255	04/19/2005
Ch. 301	SB	274	10/01/2005
Ch. 302	SB	290	10/01/2005
Ch. 303	SB	412	10/01/2005
§§ 1-22 and 24-26.			
§ 23			
			01/01/2006

MONTANA SESSION LAWS 2005

3306

Ch. 304	SB 433	07/01/2005
Ch. 305	SB 491	07/01/2005
Ch. 306	HB 396	07/01/2005
Ch. 307 §§ 2-11	HB 6	04/21/2005
§ 1		07/01/2005
Ch. 308	HB 7	07/01/2005
Ch. 309	HB 8	07/01/2005
Ch. 310	HB 12	07/01/2005
Ch. 311	HB 30	04/21/2005
Ch. 312	HB 40	04/21/2005
Ch. 313	HB 49	10/01/2005
Ch. 314	HB 53	07/01/2007
Ch. 315	HB 55	01/01/2006
Ch. 316	HB 70	10/01/2005
Ch. 317	HB 73	07/01/2005
Ch. 318	HB 85	04/21/2005
Ch. 319	HB 89	07/01/2005
Ch. 320	HB 104	04/21/2005
Ch. 321	HB 109	07/01/2005
Ch. 322	HB 119	06/28/2006
Ch. 323	HB 142	04/21/2005
Ch. 324 §§ 1, 3-7, and 10	HB 169	04/21/2005
§§ 2, 8, 9, and 11		07/01/2005
Ch. 325	HB 170	04/21/2005
Ch. 326	HB 173	04/21/2005
Ch. 327	HB 204	07/01/2005
Ch. 328	HB 211	01/02/2006
Ch. 329	HB 213	07/01/2005
Ch. 330	HB 299	04/21/2005
Ch. 331	HB 324	10/01/2005
Ch. 332	HB 346	07/01/2005
Ch. 333	HB 436	10/01/2005
Ch. 334	HB 440	07/01/2005
Ch. 335	HB 450	07/01/2005
Ch. 336	HB 451	07/01/2006
Ch. 337	HB 470	04/21/2005
Ch. 338	HB 513	10/01/2005
Ch. 339	HB 522	10/01/2005
Ch. 340	HB 591	04/21/2005
Ch. 341	HB 666	07/01/2005
Ch. 342	HB 684	10/01/2005
Ch. 343	HB 698	04/21/2005
Ch. 344	HB 759	10/01/2005
Ch. 345	HB 772	07/01/2005
Ch. 346	SB 33	10/01/2005
Ch. 347	SB 62	10/01/2005
Ch. 348	SB 80	10/01/2005
Ch. 349	SB 86	10/01/2005
Ch. 350	SB 110	04/21/2005
Ch. 351	SB 122	10/01/2005
Ch. 352	SB 124	04/21/2005
Ch. 353	SB 127	04/21/2005
Ch. 354	SB 140	04/21/2005
Ch. 355	SB 143	07/01/2005
Ch. 356	SB 145	07/01/2005
Ch. 357	SB 160	10/01/2005
Ch. 358	SB 174	10/01/2005
Ch. 359	SB 182	10/01/2005
Ch. 360	SB 207	07/01/2005
Ch. 361	SB 208	10/01/2005
Ch. 362	SB 304	10/01/2005
Ch. 363	SB 311	10/01/2005
Ch. 364	SB 381	10/01/2005

Ch. 365	SB	440	Contingent upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued.
Ch. 366	SB	459	10/01/2005
Ch. 367	SB	500	10/01/2005
Ch. 368	HB	71	04/21/2005
Ch. 369	HB	587	04/21/2005
Ch. 370	SB	384	10/01/2005
Ch. 371	SB	525	04/25/2005
Ch. 372	SB	2	04/25/2005
Ch. 373	SB	18	04/25/2005
Ch. 374	SB	58	04/25/2005
Ch. 375	SB	70	10/01/2005
Ch. 376	SB	74	10/01/2005
Ch. 377	SB	82	04/25/2005
Ch. 378	SB	91	04/25/2005
Ch. 379	SB	92	04/25/2005
Ch. 380	SB	93	04/25/2005
Ch. 381	SB	118	04/25/2005
Ch. 382	SB	119	04/25/2005
Ch. 383	SB	121	07/01/2005
Ch. 384	SB	123	10/01/2005
Ch. 385	SB	131	01/01/2006
Ch. 386	SB	137	01/01/2006
Ch. 387	SB	138	04/25/2005
Ch. 388	SB	164	10/01/2005
Ch. 389	SB	183	10/01/2005
Ch. 390	SB	196	04/25/2005
Ch. 391	SB	197	04/25/2005
Ch. 392	SB	231	10/01/2005
Ch. 393	SB	245	10/01/2005
Ch. 394	SB	248	07/01/2005
Ch. 395	SB	259	07/01/2005
Ch. 396	SB	275	10/01/2005
Ch. 397	SB	277	07/01/2005
Ch. 398	SB	279	10/01/2005
Ch. 399	SB	288	04/25/2005
Ch. 400	SB	289	10/01/2005
Ch. 401	SB	294	07/01/2005
Ch. 402	SB	314	04/25/2005
Ch. 403	SB	320	04/25/2005
Ch. 404	SB	328	07/01/2005
Ch. 405	SB	333	04/25/2005
Ch. 406	SB	358	10/01/2005
Ch. 407	SB	388	10/01/2005
Ch. 408	SB	406	10/01/2005
Ch. 409	SB	434	01/01/2006
Ch. 410	SB	435	07/01/2005
Ch. 411	SB	452	10/01/2005
Ch. 412	SB	458	10/01/2005
Ch. 413	SB	466	10/01/2005
Ch. 414	SB	472	04/25/2005
Ch. 415	SB	480	04/25/2005
Ch. 416	SB	481	07/01/2005

MONTANA SESSION LAWS 2005

3308

Ch. 417	SB	487	04/25/2005
Ch. 418	SB	498	10/01/2005
Ch. 419	SB	503	10/01/2005
Ch. 420	SB	504	01/01/2006
Ch. 421	HB	35	04/26/2005
§§ 1 and 5-10			
§§ 2-4			01/01/2006
Ch. 422	SB	308	10/01/2005
Ch. 423	SB	426	10/01/2005
Ch. 424	SB	186	04/26/2005
Ch. 425	SB	489	07/01/2005
Ch. 426	HB	46	04/28/2005
Ch. 427	HB	179	10/01/2005
Ch. 428	HB	192	04/28/2005
§§ 1, 2, 10, 11, 18(1)-(5) and (7), 19, 20, and 40			
§§ 18(6) and 22			07/01/2005
§§ 3-9, 12-17, 21, 23-39, and 41			10/01/2005
Ch. 429	HB	197	10/01/2005
Ch. 430	HB	208	04/28/2005
Ch. 431	HB	216	04/28/2005
Ch. 432	HB	220	04/28/2005
Ch. 433	HB	230	10/01/2005
Ch. 434	HB	236	04/28/2005
Ch. 435	HB	250	10/01/2005
Ch. 436	HB	254	10/01/2005
Ch. 437	HB	302	04/28/2005
Ch. 438	HB	317	10/01/2005
Ch. 439	HB	332	04/28/2005
Ch. 440	HB	345	04/28/2005
Ch. 441	HB	348	10/01/2005
Ch. 442	HB	349	04/28/2005
Ch. 443	HB	453	04/28/2005
Ch. 444	HB	474	10/01/2005
Ch. 445	HB	536	06/28/2005
Ch. 446	HB	590	10/01/2005
Ch. 447	HB	742	07/01/2005
Ch. 448	SB	108	04/28/2005
Ch. 449	SB	146	04/28/2005
§§ 1-16, 20-23, 30-33, 68-73, and 75-80			
§§ 17-19, 24-29, 34-67, and 74			07/01/2006
Ch. 450	SB	261	10/01/2005
Ch. 451	SB	292	04/28/2005
Ch. 452	SB	293	04/28/2005
Ch. 453	SB	301	07/01/2005
Ch. 454	SB	323	04/28/2005
Ch. 455	SB	340	01/01/2006
Ch. 456	SB	380	10/01/2005
Ch. 457	SB	415	04/28/2005
Ch. 458	SB	507	04/28/2005
Ch. 459	HB	4	04/28/2005
Ch. 460	HB	18	04/28/2005
Ch. 461	HB	60	10/01/2005
Ch. 462	HB	63	04/28/2005
§§ 1-3, 5-9, and 12-25			
§ 10			07/01/2005
§ 11			07/01/2006
§ 4			07/01/2007
Ch. 463	HB	83	07/01/2005
Ch. 464	HB	102	07/01/2005
Ch. 465	HB	146	10/01/2005
Ch. 466	HB	159	04/28/2005
§§ 1-8 and 10-16			
§ 9			01/01/2006
Ch. 467	HB	182	07/01/2005
Ch. 468	HB	186	04/28/2005

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 469	§§ 4 and 41-43	HB 188	04/28/2005
	§ 22		07/01/2005
	§§ 1-3, 5-21, and 23-40		10/01/2005
Ch. 470		HB 214	03/01/2006
Ch. 471	§§ 1 and 3-9	HB 235	04/28/2005
	§ 2		10/01/2005
Ch. 472	§§ 1-5(2)(c) and 5(3)-7	HB 266	04/28/2005
	§ 5(2)(d)		07/01/2005
Ch. 473		HB 288	10/01/2005
Ch. 474		HB 327	07/01/2005
Ch. 475		HB 331	10/01/2005
Ch. 476		HB 351	04/28/2005
Ch. 477		HB 374	10/01/2005
Ch. 478	§§ 1 and 4-6	HB 385	07/01/2005
	§ 2 and 3		07/01/2006
Ch. 479		HB 386	10/01/2005
Ch. 480		HB 395	07/01/2005
Ch. 481		HB 411	04/28/2005
Ch. 482		HB 414	04/28/2005
Ch. 483		HB 418	04/28/2005
Ch. 484		HB 421	03/01/2006
Ch. 485		HB 423	07/01/2005
Ch. 486		HB 428	10/01/2005
Ch. 487		HB 429	01/01/2006
Ch. 488		HB 431	10/01/2005
Ch. 489		HB 435	04/28/2005
Ch. 490		HB 438	07/01/2005
Ch. 491		HB 457	04/28/2005
Ch. 492		HB 473	10/01/2005
Ch. 493		HB 476	07/01/2005
Ch. 494		HB 484	07/01/2005
Ch. 495		HB 502	04/28/2005
Ch. 496		HB 512	07/01/2005
Ch. 497		HB 530	07/01/2005
Ch. 498		HB 537	07/01/2005
Ch. 499		HB 540	04/28/2005
Ch. 500		HB 541	01/01/2006
Ch. 501		HB 550	07/01/2005
Ch. 502		HB 552	07/01/2006
Ch. 503		HB 574	04/28/2005
Ch. 504		HB 577	07/01/2005
Ch. 505		HB 606	04/28/2005
Ch. 506		HB 615	07/01/2005
Ch. 507		HB 645	01/01/2006
Ch. 508		HB 652	07/01/2005
Ch. 509		HB 678	10/01/2005
Ch. 510		HB 681	07/01/2005
Ch. 511		HB 687	07/27/2005
Effective 90 days after passage and approval (04/28/2005)			
Ch. 512		HB 696	04/28/2005
Ch. 513		HB 701	04/28/2005
Ch. 514		HB 704	07/01/2005
Ch. 515		HB 707	07/01/2005
Ch. 516		HB 720	10/01/2005
Ch. 517	§§ 1 and 7	HB 726	07/01/2005
	§§ 2-6		07/01/2006
Ch. 518	§§ 1, 10, and 11	HB 732	04/28/2005
	§§ 2-9 and 12		03/01/2006
Ch. 519		HB 737	10/01/2005
Ch. 520		HB 738	10/01/2005
Ch. 521		HB 747	07/01/2005
Ch. 522		HB 748	04/28/2005

MONTANA SESSION LAWS 2005

3310

Ch. 523	HB 749	07/01/2005
Ch. 524	HB 756	07/01/2005
Ch. 525	HB 776	04/28/2005
Ch. 526	HB 782	04/28/2005
Ch. 527	HB 790	04/28/2005
Ch. 528	HB 802	04/28/2005
Ch. 529	SB 40	10/01/2005
Ch. 530	SB 41	10/01/2005
Ch. 531	SB 48	04/28/2005
Ch. 532	SB 68	10/01/2005
Ch. 533	SB 75	10/01/2005
Ch. 534	SB 81	04/28/2005
Ch. 535	SB 85	10/01/2005
Ch. 536	SB 87	04/28/2005
Ch. 537	SB 133	07/01/2005
Ch. 538	SB 217	10/01/2006
Ch. 539	SB 222	07/01/2005
Ch. 540	SB 271	04/28/2005
Ch. 541	SB 278	10/01/2005
Ch. 542	SB 285	07/01/2005
§§ 4 and 246		01/01/2006
§§ 1-3 and 5-245		01/01/2006
Ch. 543	SB 296	01/01/2006
Ch. 544	SB 326	10/01/2005
Ch. 545	SB 345	07/01/2005
Ch. 546	SB 407	10/01/2005
Ch. 547	SB 423	10/01/2005
Ch. 548	SB 428	07/01/2005
Ch. 549	SB 432	10/01/2005
Ch. 550	SB 442	07/01/2005
Ch. 551	SB 477	07/01/2006
Ch. 552	SB 486	10/01/2005
Ch. 553	SB 499	10/01/2005
Ch. 554	SB 524	10/01/2005
Ch. 555	HB 218	05/02/2005
Ch. 556	HB 272	10/01/2005
Ch. 557	HB 367	07/01/2005
Ch. 558	HB 529	07/01/2005
Ch. 559	SB 276	04/28/2005
Ch. 560	HB 5	05/02/2005
Ch. 561	SB 107	05/02/2005
Ch. 562	SB 114	10/01/2005
Ch. 563	SB 115	05/02/2005
Ch. 564	SB 139	07/01/2005
Ch. 565	SB 154	05/02/2005
Ch. 566	SB 167	05/02/2005
Ch. 567	SB 175	10/01/2005
Ch. 568	SB 212	07/01/2005
Ch. 569	SB 213	07/01/2005
Ch. 570	SB 224	07/01/2005
Ch. 571	SB 260	05/02/2005
Ch. 572	SB 287	07/01/2005
Ch. 573	SB 339	05/02/2005
Ch. 574	SB 342	10/01/2005
Ch. 575	SB 401	10/01/2005
Ch. 576	SB 443	10/01/2005
Ch. 577	SB 445	05/02/2005
Ch. 578	SB 461	10/01/2005
Ch. 579	HB 9	07/01/2005
Ch. 580	HB 11	07/01/2005
Ch. 581	HB 28	07/01/2005
Ch. 582	HB 45	05/06/2005
Ch. 583	HB 99	10/01/2005
Ch. 584	HB 115	05/06/2005

EFFECTIVE DATES BY CHAPTER NUMBER

Ch. 585	HB 172	03/01/2006
Ch. 586	HB 177	10/01/2005
Ch. 587	HB 227	10/01/2005
Ch. 588	HB 249	07/01/2005
Ch. 589	HB 482	07/01/2005
Ch. 590	HB 493	05/06/2005
Ch. 591	HB 517	07/01/2005
Ch. 592	HB 535	07/01/2005
Ch. 593	HB 584	05/06/2005
Ch. 594 §§ 1, 2, and 4-43	HB 592	07/01/2005
§ 3		01/01/2007
Ch. 595	HB 667	07/01/2005
Ch. 596 §§ 1-6 and 168	HB 671	07/01/2005
§§ 7-167		01/01/2006
Ch. 597	HB 689	10/01/2005
Ch. 598	HB 700	07/01/2005
Ch. 599	HB 713	05/06/2005
Ch. 600	HB 728	07/01/2005
Ch. 601	HB 740	07/01/2005
Ch. 602	HB 757	07/01/2005
Ch. 603	HB 758	07/01/2005
Ch. 604	HB 761	05/06/2005
Ch. 605	HB 769	07/01/2005
Ch. 606	SB 120	05/06/2005
Ch. 607	HB 2	07/01/2005

EFFECTIVE DATES BY DATE

<u>Effective Date</u>	<u>Chapter Number</u>	<u>Bill Number</u>
01/31/2005	Ch. 1	HB 1
02/23/2005	Ch. 2	HB 38
02/23/2005	Ch. 3	HB 84
02/23/2005	Ch. 4	HB 193
02/23/2005	Ch. 5	HB 194
02/23/2005	Ch. 7	SB 60
02/23/2005	Ch. 8	SB 240
03/15/2005	Ch. 9	HB 21
03/15/2005	Ch. 10	HB 27
03/15/2005	Ch. 12	HB 37
03/15/2005	Ch. 14	HB 108
03/18/2005	Ch. 20	HB 78
03/18/2005	Ch. 21	HB 80
03/18/2005	Ch. 29	HB 168
03/18/2005	Ch. 30	HB 171
03/18/2005	Ch. 32	HB 185
03/18/2005	Ch. 33	HB 190
03/18/2005	Ch. 34	HB 195
03/18/2005	Ch. 37	HB 274
03/24/2005	Ch. 40	HB 14
03/24/2005	Ch. 41	HB 20
03/24/2005	Ch. 46	HB 50
03/24/2005	Ch. 50	HB 79
03/24/2005	Ch. 51	HB 81
03/24/2005	Ch. 52	HB 82
03/24/2005	Ch. 56	HB 112
03/24/2005	Ch. 62	HB 144
03/24/2005	Ch. 63	HB 147
03/24/2005	Ch. 67	HB 158
03/24/2005	Ch. 68	HB 160
03/24/2005	Ch. 69	HB 161
	§§ 4, 6, and 17	
03/24/2005	Ch. 70	HB 178
03/24/2005	Ch. 74	HB 187
03/24/2005	Ch. 75	HB 198
03/24/2005	Ch. 76	HB 207
03/24/2005	Ch. 77	HB 209
03/24/2005	Ch. 78	HB 215
03/24/2005	Ch. 80	HB 242
03/24/2005	Ch. 82	HB 273
03/24/2005	Ch. 84	HB 298
03/24/2005	Ch. 85	HB 308
03/24/2005	Ch. 86	HB 312
03/24/2005	Ch. 88	HB 347
03/24/2005	Ch. 89	HB 350
03/24/2005	Ch. 91	HB 397
03/24/2005	Ch. 98	HB 564
03/24/2005	Ch. 99	HB 598
03/24/2005	Ch. 100	HB 609
03/24/2005	Ch. 102	SB 6
03/24/2005	Ch. 105	SB 17
03/24/2005	Ch. 107	SB 26
03/24/2005	Ch. 110	SB 50
03/24/2005	Ch. 111	SB 53
03/24/2005	Ch. 112	SB 54
03/24/2005	Ch. 115	SB 69
03/24/2005	Ch. 117	SB 83
03/24/2005	Ch. 122	SB 132

EFFECTIVE DATES BY DATE

03/24/2005	Ch.	125	SB	454
03/30/2005	Ch.	127	HB	370
03/30/2005	Ch.	128	HB	452
03/30/2005	Ch.	129	HB	463
03/30/2005	Ch.	131	SB	51
03/30/2005	Ch.	133	SB	64
03/30/2005	Ch.	137	SB	166
03/30/2005	Ch.	140	SB	188
03/30/2005	Ch.	141	SB	189
03/30/2005	Ch.	142	SB	235
03/30/2005	Ch.	143	SB	243
03/30/2005	Ch.	146	SB	187
04/07/2005	Ch.	148	HB	17
04/07/2005	Ch.	155	HB	113
04/07/2005	Ch.	161	HB	206
04/07/2005	Ch.	162	HB	212
04/07/2005	Ch.	164	HB	225
04/07/2005	Ch.	165	HB	234
04/07/2005	Ch.	168	HB	269
04/07/2005	Ch.	176	HB	371
04/07/2005	Ch.	183	HB	520
04/07/2005	Ch.	193	HB	283
04/07/2005	Ch.	194	HB	638
04/07/2005	Ch.	208	SB	152
04/07/2005	Ch.	211	SB	178
04/08/2005	Ch.	149	HB	32
04/08/2005	Ch.	150	HB	34
04/08/2005	Ch.	151	HB	44
04/08/2005	Ch.	152	HB	88
04/08/2005	Ch.	157	HB	174
04/08/2005	Ch.	158	HB	191
04/08/2005	Ch.	160	HB	201
§§ 2-4				
04/08/2005	Ch.	169	HB	270
04/08/2005	Ch.	170	HB	271
04/08/2005	Ch.	174	HB	318
04/08/2005	Ch.	189	HB	607
04/08/2005	Ch.	190	HB	624
04/08/2005	Ch.	202	SB	105
04/08/2005	Ch.	209	SB	162
04/08/2005	Ch.	214	SB	317
04/10/2005	Ch.	216	HB	688
04/13/2005	Ch.	217	SB	375
04/14/2005	Ch.	218	SB	470
04/15/2005	Ch.	220	HB	153
04/15/2005	Ch.	221	HB	199
04/15/2005	Ch.	226	HB	492
04/15/2005	Ch.	227	HB	514
04/15/2005	Ch.	234	SB	76
04/15/2005	Ch.	235	SB	77
04/15/2005	Ch.	238	SB	206
04/15/2005	Ch.	240	SB	225
04/15/2005	Ch.	242	SB	264
04/15/2005	Ch.	245	SB	298
04/15/2005	Ch.	254	SB	355
04/15/2005	Ch.	256	SB	365
04/15/2005	Ch.	257	SB	368
04/15/2005	Ch.	260	SB	373
04/15/2005	Ch.	261	SB	410
04/15/2005	Ch.	264	SB	460
04/15/2005	Ch.	265	SB	478
04/15/2005	Ch.	267	SB	497
04/18/2005	Ch.	283	SB	61

MONTANA SESSION LAWS 2005

3314

04/19/2005	Ch.	272	HB	140
04/19/2005	Ch.	279	HB	406
§ 3(1) and 9				
04/19/2005	Ch.	281	HB	668
04/19/2005	Ch.	282	HB	721
04/19/2005	Ch.	294	HB	628
04/19/2005	Ch.	298	SB	116
04/19/2005	Ch.	299	SB	185
04/19/2005	Ch.	300	SB	255
04/20/2005	Ch.	293	HB	528
04/20/2005	Ch.	295	HB	745
04/21/2005	Ch.	307	HB	6
§§ 2-11				
04/21/2005	Ch.	311	HB	30
04/21/2005	Ch.	312	HB	40
04/21/2005	Ch.	318	HB	85
04/21/2005	Ch.	320	HB	104
04/21/2005	Ch.	323	HB	142
04/21/2005	Ch.	324	HB	169
§§ 1, 3-7, and 10				
04/21/2005	Ch.	325	HB	170
04/21/2005	Ch.	326	HB	173
04/21/2005	Ch.	330	HB	299
04/21/2005	Ch.	337	HB	470
04/21/2005	Ch.	340	HB	591
04/21/2005	Ch.	343	HB	698
04/21/2005	Ch.	350	SB	110
04/21/2005	Ch.	352	SB	124
04/21/2005	Ch.	353	SB	127
04/21/2005	Ch.	354	SB	140
04/21/2005	Ch.	368	HB	71
04/21/2005	Ch.	369	HB	587
04/25/2005	Ch.	371	SB	525
04/25/2005	Ch.	372	SB	2
04/25/2005	Ch.	373	SB	18
04/25/2005	Ch.	374	SB	58
04/25/2005	Ch.	377	SB	82
04/25/2005	Ch.	378	SB	91
04/25/2005	Ch.	379	SB	92
04/25/2005	Ch.	380	SB	93
04/25/2005	Ch.	381	SB	118
04/25/2005	Ch.	382	SB	119
04/25/2005	Ch.	387	SB	138
04/25/2005	Ch.	390	SB	196
04/25/2005	Ch.	391	SB	197
04/25/2005	Ch.	399	SB	288
04/25/2005	Ch.	402	SB	314
04/25/2005	Ch.	403	SB	320
04/25/2005	Ch.	405	SB	333
04/25/2005	Ch.	414	SB	472
04/25/2005	Ch.	415	SB	480
04/25/2005	Ch.	417	SB	487
04/26/2005	Ch.	421	HB	35
§§ 1 and 5-10				
04/26/2005	Ch.	424	SB	186
04/28/2005	Ch.	426	HB	46
04/28/2005	Ch.	428	HB	192
§§ 1, 2, 10, 11, 18(1)-(5) and (7), 19, 20, and 40				
04/28/2005	Ch.	430	HB	208
04/28/2005	Ch.	431	HB	216
04/28/2005	Ch.	432	HB	220
04/28/2005	Ch.	434	HB	236

04/28/2005	Ch.	437	HB	302
04/28/2005	Ch.	439	HB	332
04/28/2005	Ch.	440	HB	345
04/28/2005	Ch.	442	HB	349
04/28/2005	Ch.	443	HB	453
04/28/2005	Ch.	448	SB	108
04/28/2005	Ch.	449	SB	146
		§§ 1-16, 20-23, 30-33, 68-73, and 75-80		
04/28/2005	Ch.	451	SB	292
04/28/2005	Ch.	452	SB	293
04/28/2005	Ch.	454	SB	323
04/28/2005	Ch.	457	SB	415
04/28/2005	Ch.	458	SB	507
04/28/2005	Ch.	459	HB	4
04/28/2005	Ch.	460	HB	18
04/28/2005	Ch.	462	HB	63
		§§ 1-3, 5-9, and 12-25		
04/28/2005	Ch.	466	HB	159
		§§ 1-8 and 10-16		
04/28/2005	Ch.	468	HB	186
04/28/2005	Ch.	469	HB	188
		§§ 4 and 41-43		
04/28/2005	Ch.	471	HB	235
		§§ 1 and 3-9		
04/28/2005	Ch.	472	HB	266
		§§ 1-5(2)(c) and 5(3)-7		
04/28/2005	Ch.	476	HB	351
04/28/2005	Ch.	481	HB	411
04/28/2005	Ch.	482	HB	414
04/28/2005	Ch.	483	HB	418
04/28/2005	Ch.	489	HB	435
04/28/2005	Ch.	491	HB	457
04/28/2005	Ch.	495	HB	502
04/28/2005	Ch.	499	HB	540
04/28/2005	Ch.	503	HB	574
04/28/2005	Ch.	505	HB	606
04/28/2005	Ch.	512	HB	696
04/28/2005	Ch.	513	HB	701
04/28/2005	Ch.	518	HB	732
		§§ 1, 10, and 11		
04/28/2005	Ch.	522	HB	748
04/28/2005	Ch.	525	HB	776
04/28/2005	Ch.	526	HB	782
04/28/2005	Ch.	527	HB	790
04/28/2005	Ch.	528	HB	802
04/28/2005	Ch.	531	SB	48
04/28/2005	Ch.	534	SB	81
04/28/2005	Ch.	536	SB	87
04/28/2005	Ch.	540	SB	271
04/28/2005	Ch.	559	SB	276
05/01/2005	Ch.	241	SB	244
05/02/2005	Ch.	555	HB	218
05/02/2005	Ch.	560	HB	5
05/02/2005	Ch.	561	SB	107
05/02/2005	Ch.	563	SB	115
05/02/2005	Ch.	565	SB	154
05/02/2005	Ch.	566	SB	167
05/02/2005	Ch.	571	SB	260
05/02/2005	Ch.	573	SB	339
05/02/2005	Ch.	577	SB	445
05/06/2005	Ch.	582	HB	45
05/06/2005	Ch.	584	HB	115

MONTANA SESSION LAWS 2005

3316

05/06/2005	Ch.	590	HB	493
05/06/2005	Ch.	593	HB	584
05/06/2005	Ch.	599	HB	713
05/06/2005	Ch.	604	HB	761
05/06/2005	Ch.	606	SB	120
06/28/2005	Ch.	445	HB	536
07/01/2005	Ch.	6	HB	447
07/01/2005	Ch.	18	HB	77
07/01/2005	Ch.	26	HB	126
07/01/2005	Ch.	31	HB	175
07/01/2005	Ch.	35	HB	205
07/01/2005	Ch.	42	HB	24
07/01/2005	Ch.	43	HB	25
07/01/2005	Ch.	44	HB	26
07/01/2005	Ch.	49	HB	64
07/01/2005	Ch.	53	HB	86
07/01/2005	Ch.	58	HB	116
07/01/2005	Ch.	66	HB	157
07/01/2005	Ch.	69	HB	161
§§ 1-3, 5, and 7-16				
07/01/2005	Ch.	92	HB	400
07/01/2005	Ch.	103	SB	8
07/01/2005	Ch.	114	SB	67
07/01/2005	Ch.	121	SB	106
07/01/2005	Ch.	126	HB	203
07/01/2005	Ch.	132	SB	57
07/01/2005	Ch.	134	SB	84
07/01/2005	Ch.	135	SB	98
07/01/2005	Ch.	138	SB	170
07/01/2005	Ch.	147	HB	16
07/01/2005	Ch.	160	HB	201
§ 1				
07/01/2005	Ch.	181	HB	481
07/01/2005	Ch.	188	HB	581
07/01/2005	Ch.	191	HB	631
07/01/2005	Ch.	199	HB	709
07/01/2005	Ch.	204	SB	130
07/01/2005	Ch.	206	SB	135
07/01/2005	Ch.	213	SB	316
07/01/2005	Ch.	215	SB	359
07/01/2005	Ch.	222	HB	280
07/01/2005	Ch.	223	HB	301
§§ 6-9 and 11-13				
07/01/2005	Ch.	224	HB	316
07/01/2005	Ch.	225	HB	483
07/01/2005	Ch.	229	SB	21
07/01/2005	Ch.	230	SB	29
07/01/2005	Ch.	237	SB	126
07/01/2005	Ch.	246	SB	322
07/01/2005	Ch.	253	SB	352
07/01/2005	Ch.	255	SB	363
07/01/2005	Ch.	259	SB	370
07/01/2005	Ch.	278	HB	379
07/01/2005	Ch.	280	HB	425
07/01/2005	Ch.	284	SB	88
07/01/2005	Ch.	286	SB	302
§§ 2 and 7-21				
07/01/2005	Ch.	287	SB	324
07/01/2005	Ch.	288	HB	22
07/01/2005	Ch.	289	HB	67
07/01/2005	Ch.	304	SB	433
07/01/2005	Ch.	305	SB	491
07/01/2005	Ch.	306	HB	396

EFFECTIVE DATES BY DATE

07/01/2005	Ch.	307	HB	6
		§ 1		
07/01/2005	Ch.	308	HB	7
07/01/2005	Ch.	309	HB	8
07/01/2005	Ch.	310	HB	12
07/01/2005	Ch.	317	HB	73
07/01/2005	Ch.	319	HB	89
07/01/2005	Ch.	321	HB	109
07/01/2005	Ch.	324	HB	169
		§§ 2, 8, 9, and 11		
07/01/2005	Ch.	327	HB	204
07/01/2005	Ch.	329	HB	213
07/01/2005	Ch.	332	HB	346
07/01/2005	Ch.	334	HB	440
07/01/2005	Ch.	335	HB	450
07/01/2005	Ch.	341	HB	666
07/01/2005	Ch.	345	HB	772
07/01/2005	Ch.	355	SB	143
07/01/2005	Ch.	356	SB	145
07/01/2005	Ch.	360	SB	207
07/01/2005	Ch.	383	SB	121
07/01/2005	Ch.	394	SB	248
07/01/2005	Ch.	395	SB	259
07/01/2005	Ch.	397	SB	277
07/01/2005	Ch.	401	SB	294
07/01/2005	Ch.	404	SB	328
07/01/2005	Ch.	410	SB	435
07/01/2005	Ch.	416	SB	481
07/01/2005	Ch.	425	SB	489
07/01/2005	Ch.	428	HB	192
		§§ 18(6) and 22		
07/01/2005	Ch.	447	HB	742
07/01/2005	Ch.	453	SB	301
07/01/2005	Ch.	462	HB	63
		§ 10		
07/01/2005	Ch.	463	HB	83
07/01/2005	Ch.	464	HB	102
07/01/2005	Ch.	467	HB	182
07/01/2005	Ch.	469	HB	188
		§ 22		
07/01/2005	Ch.	472	HB	266
		§ 5(2)(d)		
07/01/2005	Ch.	474	HB	327
07/01/2005	Ch.	478	HB	385
		§§ 1 and 4-6		
07/01/2005	Ch.	480	HB	395
07/01/2005	Ch.	485	HB	423
07/01/2005	Ch.	490	HB	438
07/01/2005	Ch.	493	HB	476
07/01/2005	Ch.	494	HB	484
07/01/2005	Ch.	496	HB	512
07/01/2005	Ch.	497	HB	530
07/01/2005	Ch.	498	HB	537
07/01/2005	Ch.	501	HB	550
07/01/2005	Ch.	504	HB	577
07/01/2005	Ch.	506	HB	615
07/01/2005	Ch.	508	HB	652
07/01/2005	Ch.	510	HB	681
07/01/2005	Ch.	514	HB	704
07/01/2005	Ch.	515	HB	707
07/01/2005	Ch.	517	HB	726
		§§ 1 and 7		
07/01/2005	Ch.	521	HB	747

MONTANA SESSION LAWS 2005

3318

07/01/2005	Ch.	523	HB	749
07/01/2005	Ch.	524	HB	756
07/01/2005	Ch.	537	SB	133
07/01/2005	Ch.	539	SB	222
07/01/2005	Ch.	542	SB	285
§§ 4 and 246				
07/01/2005	Ch.	545	SB	345
07/01/2005	Ch.	548	SB	428
07/01/2005	Ch.	550	SB	442
07/01/2005	Ch.	557	HB	367
07/01/2005	Ch.	558	HB	529
07/01/2005	Ch.	564	SB	139
07/01/2005	Ch.	568	SB	212
07/01/2005	Ch.	569	SB	213
07/01/2005	Ch.	570	SB	224
07/01/2005	Ch.	572	SB	287
07/01/2005	Ch.	579	HB	9
07/01/2005	Ch.	580	HB	11
07/01/2005	Ch.	581	HB	28
07/01/2005	Ch.	588	HB	249
07/01/2005	Ch.	589	HB	482
07/01/2005	Ch.	591	HB	517
07/01/2005	Ch.	592	HB	535
07/01/2005	Ch.	594	HB	592
§§ 1, 2, and 4-43				
07/01/2005	Ch.	595	HB	667
07/01/2005	Ch.	596	HB	671
§§ 1-6 and 168				
07/01/2005	Ch.	598	HB	700
07/01/2005	Ch.	600	HB	728
07/01/2005	Ch.	601	HB	740
07/01/2005	Ch.	602	HB	757
07/01/2005	Ch.	603	HB	758
07/01/2005	Ch.	605	HB	769
07/01/2005	Ch.	607	HB	2
07/27/2005	Ch.	511	HB	687
Effective 90 days after passage and approval (04/28/2005)				
10/01/2005	Ch.	11	HB	29
10/01/2005	Ch.	13	HB	66
10/01/2005	Ch.	15	HB	118
10/01/2005	Ch.	16	SB	14
10/01/2005	Ch.	17	SB	20
10/01/2005	Ch.	23	HB	90
10/01/2005	Ch.	24	HB	101
10/01/2005	Ch.	25	HB	107
10/01/2005	Ch.	28	HB	128
10/01/2005	Ch.	36	HB	226
10/01/2005	Ch.	38	HB	300
10/01/2005	Ch.	39	HB	381
10/01/2005	Ch.	45	HB	39
10/01/2005	Ch.	47	HB	54
10/01/2005	Ch.	48	HB	56
10/01/2005	Ch.	54	HB	97
10/01/2005	Ch.	55	HB	110
10/01/2005	Ch.	57	HB	114
10/01/2005	Ch.	59	HB	131
10/01/2005	Ch.	60	HB	138
10/01/2005	Ch.	61	HB	139
10/01/2005	Ch.	64	HB	154
10/01/2005	Ch.	65	HB	155
10/01/2005	Ch.	71	HB	180
10/01/2005	Ch.	72	HB	183
10/01/2005	Ch.	73	HB	184

EFFECTIVE DATES BY DATE

10/01/2005	Ch.	79	HB	224
10/01/2005	Ch.	81	HB	255
10/01/2005	Ch.	83	HB	285
10/01/2005	Ch.	87	HB	313
10/01/2005	Ch.	90	HB	354
10/01/2005	Ch.	93	HB	401
10/01/2005	Ch.	94	HB	437
10/01/2005	Ch.	95	HB	439
10/01/2005	Ch.	96	HB	508
10/01/2005	Ch.	97	HB	557
10/01/2005	Ch.	101	HB	612
10/01/2005	Ch.	104	SB	9
10/01/2005	Ch.	106	SB	23
10/01/2005	Ch.	108	SB	36
10/01/2005	Ch.	109	SB	37
10/01/2005	Ch.	113	SB	56
10/01/2005	Ch.	118	SB	94
10/01/2005	Ch.	119	SB	99
10/01/2005	Ch.	120	SB	100
10/01/2005	Ch.	123	SB	141
10/01/2005	Ch.	124	SB	169
10/01/2005	Ch.	130	SB	24
10/01/2005	Ch.	136	SB	117
10/01/2005	Ch.	139	SB	171
10/01/2005	Ch.	144	SB	356
10/01/2005	Ch.	145	SB	16
10/01/2005	Ch.	153	HB	100
10/01/2005	Ch.	154	HB	103
10/01/2005	Ch.	156	HB	162
10/01/2005	Ch.	159	HB	196
10/01/2005	Ch.	163	HB	223
10/01/2005	Ch.	166	HB	257
10/01/2005	Ch.	167	HB	262
10/01/2005	Ch.	171	HB	275
10/01/2005	Ch.	172	HB	281
10/01/2005	Ch.	173	HB	306
10/01/2005	Ch.	175	HB	321
10/01/2005	Ch.	177	HB	409
10/01/2005	Ch.	178	HB	420
10/01/2005	Ch.	179	HB	427
10/01/2005	Ch.	180	HB	478
10/01/2005	Ch.	182	HB	507
10/01/2005	Ch.	185	HB	556
10/01/2005	Ch.	186	HB	559
10/01/2005	Ch.	187	HB	567
10/01/2005	Ch.	192	HB	636
10/01/2005	Ch.	195	HB	653
10/01/2005	Ch.	196	HB	660
10/01/2005	Ch.	197	HB	702
10/01/2005	Ch.	198	HB	743
10/01/2005	Ch.	200	SB	42
10/01/2005	Ch.	201	SB	103
10/01/2005	Ch.	203	SB	129
10/01/2005	Ch.	205	SB	134
10/01/2005	Ch.	207	SB	136
10/01/2005	Ch.	210	SB	165
10/01/2005	Ch.	212	SB	254
10/01/2005	Ch.	219	HB	150
10/01/2005	Ch.	228	HB	746
10/01/2005	Ch.	231	SB	32
10/01/2005	Ch.	232	SB	38
10/01/2005	Ch.	233	SB	39
10/01/2005	Ch.	239	SB	214

MONTANA SESSION LAWS 2005

3320

10/01/2005	Ch.	243	SB	282
10/01/2005	Ch.	244	SB	286
10/01/2005	Ch.	247	SB	325
10/01/2005	Ch.	248	SB	329
10/01/2005	Ch.	249	SB	335
10/01/2005	Ch.	250	SB	347
10/01/2005	Ch.	251	SB	349
10/01/2005	Ch.	252	SB	350
10/01/2005	Ch.	258	SB	369
10/01/2005	Ch.	262	SB	451
10/01/2005	Ch.	263	SB	457
10/01/2005	Ch.	266	SB	479
10/01/2005	Ch.	268	HB	643
10/01/2005	Ch.	270	HB	68
10/01/2005	Ch.	271	HB	105
10/01/2005	Ch.	273	HB	167
10/01/2005	Ch.	274	HB	244
10/01/2005	Ch.	275	HB	297
10/01/2005	Ch.	276	HB	307
10/01/2005	Ch.	277	HB	326
10/01/2005	Ch.	285	SB	299
10/01/2005	Ch.	291	HB	295
10/01/2005	Ch.	292	HB	363
10/01/2005	Ch.	296	SB	1
10/01/2005	Ch.	301	SB	274
10/01/2005	Ch.	302	SB	290
10/01/2005	Ch.	303	SB	412
§§ 1-22 and 24-26				
10/01/2005	Ch.	313	HB	49
10/01/2005	Ch.	316	HB	70
10/01/2005	Ch.	331	HB	324
10/01/2005	Ch.	333	HB	436
10/01/2005	Ch.	338	HB	513
10/01/2005	Ch.	339	HB	522
10/01/2005	Ch.	342	HB	684
10/01/2005	Ch.	344	HB	759
10/01/2005	Ch.	346	SB	33
10/01/2005	Ch.	347	SB	62
10/01/2005	Ch.	348	SB	80
10/01/2005	Ch.	349	SB	86
10/01/2005	Ch.	351	SB	122
10/01/2005	Ch.	357	SB	160
10/01/2005	Ch.	358	SB	174
10/01/2005	Ch.	359	SB	182
10/01/2005	Ch.	361	SB	208
10/01/2005	Ch.	362	SB	304
10/01/2005	Ch.	363	SB	311
10/01/2005	Ch.	364	SB	381
10/01/2005	Ch.	366	SB	459
10/01/2005	Ch.	367	SB	500
10/01/2005	Ch.	370	SB	384
10/01/2005	Ch.	375	SB	70
10/01/2005	Ch.	376	SB	74
10/01/2005	Ch.	384	SB	123
10/01/2005	Ch.	388	SB	164
10/01/2005	Ch.	389	SB	183
10/01/2005	Ch.	392	SB	231
10/01/2005	Ch.	393	SB	245
10/01/2005	Ch.	396	SB	275
10/01/2005	Ch.	398	SB	279
10/01/2005	Ch.	400	SB	289
10/01/2005	Ch.	406	SB	358
10/01/2005	Ch.	407	SB	388

EFFECTIVE DATES BY DATE

10/01/2005	Ch.	408	SB	406
10/01/2005	Ch.	411	SB	452
10/01/2005	Ch.	412	SB	458
10/01/2005	Ch.	413	SB	466
10/01/2005	Ch.	418	SB	498
10/01/2005	Ch.	419	SB	503
10/01/2005	Ch.	422	SB	308
10/01/2005	Ch.	423	SB	426
10/01/2005	Ch.	427	HB	179
10/01/2005	Ch.	428	HB	192
§§ 3-9, 12-17, 21, 23-39, and 41				
10/01/2005	Ch.	429	HB	197
10/01/2005	Ch.	433	HB	230
10/01/2005	Ch.	435	HB	250
10/01/2005	Ch.	436	HB	254
10/01/2005	Ch.	438	HB	317
10/01/2005	Ch.	441	HB	348
10/01/2005	Ch.	444	HB	474
10/01/2005	Ch.	446	HB	590
10/01/2005	Ch.	450	SB	261
10/01/2005	Ch.	456	SB	380
10/01/2005	Ch.	461	HB	60
10/01/2005	Ch.	465	HB	146
10/01/2005	Ch.	469	HB	188
§§ 1-3, 5-21, and 23-40				
10/01/2005	Ch.	471	HB	235
§ 2				
10/01/2005	Ch.	473	HB	288
10/01/2005	Ch.	475	HB	331
10/01/2005	Ch.	477	HB	374
10/01/2005	Ch.	479	HB	386
10/01/2005	Ch.	486	HB	428
10/01/2005	Ch.	488	HB	431
10/01/2005	Ch.	492	HB	473
10/01/2005	Ch.	509	HB	678
10/01/2005	Ch.	516	HB	720
10/01/2005	Ch.	519	HB	737
10/01/2005	Ch.	520	HB	738
10/01/2005	Ch.	529	SB	40
10/01/2005	Ch.	530	SB	41
10/01/2005	Ch.	532	SB	68
10/01/2005	Ch.	533	SB	75
10/01/2005	Ch.	535	SB	85
10/01/2005	Ch.	541	SB	278
10/01/2005	Ch.	544	SB	326
10/01/2005	Ch.	546	SB	407
10/01/2005	Ch.	547	SB	423
10/01/2005	Ch.	549	SB	432
10/01/2005	Ch.	552	SB	486
10/01/2005	Ch.	553	SB	499
10/01/2005	Ch.	554	SB	524
10/01/2005	Ch.	556	HB	272
10/01/2005	Ch.	562	SB	114
10/01/2005	Ch.	567	SB	175
10/01/2005	Ch.	574	SB	342
10/01/2005	Ch.	575	SB	401
10/01/2005	Ch.	576	SB	443
10/01/2005	Ch.	578	SB	461
10/01/2005	Ch.	583	HB	99
10/01/2005	Ch.	586	HB	177
10/01/2005	Ch.	587	HB	227
10/01/2005	Ch.	597	HB	689
01/01/2006	Ch.	22	HB	87

MONTANA SESSION LAWS 2005

3322

01/01/2006	Ch.	27	HB	127
01/01/2006	Ch.	116	SB	79
01/01/2006	Ch.	236	SB	95
01/01/2006	Ch.	290	HB	156
01/01/2006	Ch.	303	SB	412
		§ 23		
01/01/2006	Ch.	315	HB	55
01/01/2006	Ch.	385	SB	131
01/01/2006	Ch.	386	SB	137
01/01/2006	Ch.	409	SB	434
01/01/2006	Ch.	420	SB	504
01/01/2006	Ch.	421	HB	35
		§§ 2-4		
01/01/2006	Ch.	455	SB	340
01/01/2006	Ch.	466	HB	159
		§ 9		
01/01/2006	Ch.	487	HB	429
01/01/2006	Ch.	500	HB	541
01/01/2006	Ch.	507	HB	645
01/01/2006	Ch.	542	SB	285
		§§ 1-3 and 5-245		
01/01/2006	Ch.	543	SB	296
01/01/2006	Ch.	596	HB	671
		§§ 7-167		
01/02/2006	Ch.	328	HB	211
03/01/2006	Ch.	470	HB	214
03/01/2006	Ch.	484	HB	421
03/01/2006	Ch.	518	HB	732
		§§ 2-9 and 12		
03/01/2006	Ch.	585	HB	172
06/28/2006	Ch.	322	HB	119
07/01/2006	Ch.	19	HB	43
07/01/2006	Ch.	184	HB	555
07/01/2006	Ch.	286	SB	302
		§§ 1 and 3-6		
07/01/2006	Ch.	297	SB	104
07/01/2006	Ch.	336	HB	451
07/01/2006	Ch.	449	SB	146
		§§ 17-19, 24-29, 34-67, and 74		
07/01/2006	Ch.	462	HB	63
		§ 11		
07/01/2006	Ch.	478	HB	385
		§ 2 and 3		
07/01/2006	Ch.	502	HB	552
07/01/2006	Ch.	517	HB	726
		§§ 2-6		
07/01/2006	Ch.	551	SB	477
10/01/2006	Ch.	279	HB	406
		§§ 1, 2, 3(2)-(5), and 4-8		
10/01/2006	Ch.	538	SB	217
12/31/2006	Ch.	223	HB	301
		§§ 1-5 and 10		
01/01/2007	Ch.	594	HB	592
		§ 3		
07/01/2007	Ch.	269	SB	191
Upon approval by electorate				
07/01/2007	Ch.	314	HB	53
07/01/2007	Ch.	462	HB	63
		§ 4		
?	Ch.	365	SB	440

Contingent upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug,

3323

EFFECTIVE DATES BY DATE

Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued.

SESSION LAW TO CODE

<u>Ch.</u>	<u>Sec.</u>	<u>MCA</u>	<u>Ch.</u>	<u>Sec.</u>	<u>MCA</u>
1	1	Appropriations	3	40-5-203	
	2	Effective date	4	40-5-206	
2	1	15-6-201	5	40-5-226	
	2	Effective date	6	40-5-263	
	3	Retroactive applicability	7	40-5-271	
3	1	15-6-138	8	40-5-403	
	2	Effective date	9	40-5-431	
	3	Retroactive applicability	10	40-5-432	
4	1	15-1-230	11	40-5-433	
	2	15-30-166	12	40-5-434	
	3	15-31-161	13	40-5-601	
	4	15-31-162	14	40-5-701	
	5	Effective date	15	40-5-901	
	6	Retroactive applicability	16	40-5-906	
	7	Termination	17	40-5-909	
5	1	15-36-311	18	40-5-923	
	2	15-36-331	19	Notification to tribal governments	
	3	Effective date	20	Effective date	
	4	Retroactive applicability	22	1 61-3-324	
6	1	2-18-301	2	61-3-325	
	2	2-18-303 (Replaced by sec. 7, Ch. 421)	3	Effective date	
	3	2-18-304	23	1 Sec. 4, Ch. 81, L. 2003	
	4	2-18-312	24	1 61-10-125	
	5	2-18-703	25	1 2-17-804	
	6	Appropriation (Replaced by sec. 8, Ch. 421)	2	2-17-807	
	7	Repealer	3	2-17-808	
	8	Effective date	4	2-17-813	
7	1	50-5-233	5	Repealer	
	2	Effective date	26	1 17-6-317	
8	1	Loan reauthorization	2	17-6-318	
	2	Two-thirds vote required	3	39-11-103	
	3	Remedial nature	4	39-11-202	
	4	Saving clause	5	39-71-116	
	5	Effective date	6	39-71-118	
9	1	17-5-205	7	39-71-401	
	2	Effective date	8	39-71-2211	
10	1	22-3-603	9	39-71-2312	
	2	Effective date	10	Repealer	
11	1	2-18-601	11	Directions to code commissioner	
	2	2-18-611	12	Effective date — applicability	
12	1	15-24-925	13	Termination date	
	2	81-7-303	27	1 53-20-102	
	3	81-7-603	2	Effective date	
	4	Effective date	28	1 10-1-205	
13	1	46-18-403	29	1 33-10-105	
14	1	39-3-213	2	33-10-110	
	2	Effective date	3	Effective date	
15	1	32-1-371	30	1 15-30-313	
	2	32-1-372	2	Effective date	
	3	32-1-1001	3	Retroactive applicability	
	4	Repealer	31	1 39-71-743	
16	1	Repealer	2	Effective date — applicability	
17	1	85-2-227	32	1 82-4-338	
18	1	75-10-1203	2	82-4-433	
	2	75-10-1212	3	Effective date	
	3	Saving clause	33	1 46-24-106	
	4	Effective date	2	Effective date	
19	1	82-10-104	3	Retroactive applicability	
	2	Effective date	34	1 30-12-101	
20	1	75-11-509	2	30-12-203	
	2	Effective date	3	50-50-207	
21	1	40-5-201	4	Effective date — applicability	
	2	40-5-202	35	1 46-9-511	
			2	Effective date	
			36	1 2-15-1781	

2	7-3-1344	54	1	61-8-731 (Replaced by sec. 5, Ch. 426)
3	7-4-2503		2	61-8-734
4	7-4-2508	55	1	46-24-220
5	7-4-2509		2	Codification instruction
6	7-4-2510	56	1	2-18-120
7	7-4-3001		2	2-18-101
8	7-32-2102		3	Codification instruction
9	7-32-2126		4	Effective date
10	10-4-102	57	1	77-1-130
11	19-7-612		2	Sec. 5, Ch. 461, L. 1997
12	19-7-801		3	Sec. 6, Ch. 270, L. 2001
13	39-3-406		4	Termination
14	40-6-402	58	1	17-7-138
15	44-2-401		2	17-7-139
16	44-5-506		3	Effective date
17	45-8-108	59	1	87-1-102
18	Name change — directions to code commissioner		2	87-3-111
37	1		3	87-3-112
	2		4	87-3-115
	3		5	87-3-117
	4		6	87-3-118
	5		7	Repealer
	6	60	1	37-3-201
38	1		2	37-4-201
	2	61	1	10-1-104
	3		2	10-1-105
	4	62	1	75-10-802
	5		2	75-10-803
39	1		3	75-10-804
	2		4	75-10-805
40	1		5	75-10-807
	2		6	Effective date
	3	63	1	82-4-303
41	1		2	82-4-305
	2		3	82-4-335
42	1		4	82-4-337
	2		5	82-4-339
	3		6	Effective date
	4	64	1	32-5-308
	5	65	1	2-2-131
43	1	66	1	33-20-505
	2		2	Saving clause
	3		3	Effective date — applicability
	4	67	1	15-2-302
	5		2	15-30-201
44	1		3	15-30-202
	2		4	15-30-203
	3		5	15-30-204
	4		6	15-30-209
45	1		7	15-30-210
46	1		8	15-30-248
	2		9	39-51-2402
47	1		10	Repealer
	2		11	Saving clause
48	1		12	Effective date
	2		13	Retroactive applicability
	3	68	1	50-60-103
49	1		2	50-60-105
	2		3	50-60-109
	3		4	50-60-110
	4		5	50-74-219
50	1		6	Effective date — applicability
	2	69	1	39-71-2208
51	1		2	39-71-306
	2		3	39-71-315
52	1		4	39-71-504
	2		5	39-71-704
53	1		6	39-71-915
	2		7	39-71-2105

MONTANA SESSION LAWS 2005

3326

	8	39-71-2108		2	2-15-1870
	9	39-71-2203		3	53-20-202
	10	39-71-2204		4	53-20-203
	11	39-71-2205		5	53-20-205
	12	39-71-2336		6	Repealer
	13	39-71-2337		7	Effective date
	14	39-71-2339	79	1	61-5-102
	15	Repealer		2	61-5-110
	16	Codification instruction	80	1	87-2-105
	17	Effective dates — applicability		2	87-2-805
70	1	15-7-305		3	Effective date
	2	15-7-308	81	1	53-21-102
	3	85-2-102		2	53-21-126
	4	85-2-117	82	1	69-12-102
	5	85-2-307		2	Effective date
	6	85-2-308	83	1	40-15-115
	7	85-2-310		2	40-15-116
	8	85-2-314		3	40-15-117
	9	85-2-316		4	40-15-118
	10	85-2-421		5	40-15-119
	11	85-2-423		6	40-15-120
	12	85-2-424		7	40-15-121
	13	85-2-426		8	Codification instruction
	14	85-2-431	84	1	87-1-274
	15	Saving clause		2	Codification instruction
	16	Effective date		3	Effective date
71	1	30-13-204	85	1	85-2-102
	2	30-13-208		2	85-2-338
	3	30-13-210		3	85-2-402
	4	30-13-212		4	85-2-404
	5	32-1-112		5	85-2-407
	6	35-1-1309		6	85-2-408
	7	35-2-119		7	85-2-419
	8	35-2-1109		8	85-2-436
	9	35-8-205		9	Repealer
	10	35-8-206		10	Effective date
	11	35-8-212	86	1	23-2-409
	12	35-10-113		2	Saving clause
	13	35-10-622		3	Effective date
	14	35-10-627	87	1	53-1-203
	15	35-12-606	88	1	76-6-107
	16	35-12-1302		2	Effective date
	17	35-12-1304	89	1	77-6-203
	18	Repealer		2	Effective date
72	1	53-6-401	90	1	70-24-432
	2	53-6-402	91	1	20-3-351
73	1	1-11-301		2	20-6-301
	2	22-1-103		3	Coordination instruction
	3	22-1-402		4	Effective date
	4	22-1-404	92	1	39-51-2201
	5	Repealer		2	Effective date
74	1	60-1-207	93	1	50-76-103
	2	Effective date		2	50-76-113
75	1	2-18-101		3	50-76-114
	2	2-18-111		4	50-76-109
	3	2-18-601		5	50-76-110
	4	2-18-611		6	50-76-112
	5	2-18-701		7	Codification instruction
	6	2-18-809	94	1	53-2-608
	7	2-18-1101	95	1	15-30-124
	8	2-18-1202		2	Applicability
	9	2-18-1303	96	1	2-18-1303
	10	39-29-101	97	1	32-5-306
	11	39-30-103		2	Saving clause
	12	Effective date	98	1	23-1-109
76	1	72-6-301		2	Effective date
	2	Effective date	99	1	Sec. 9, Ch. 441, L. 2003
77	1	32-6-102		2	Sec. 10, Ch. 441, L. 2003
	2	Effective date		3	Effective date
78	1	2-15-1869	100	1	85-2-125

	2	Saving clause		2	Effective date
	3	Effective date	123	1	1-5-416
101	1	77-5-212	124	1	69-3-207
102	1	40-6-405	125	1	31-1-104
	2	Coordination instruction		2	32-5-103
	3	Effective date		3	32-5-301
103	1	39-71-105		4	Effective date
	2	39-71-107		5	Retroactive applicability
	3	39-71-201	126	1	2-15-1731
	4	39-71-204		2	2-15-1734
	5	39-71-307		3	2-15-1751
	6	39-71-407		4	2-15-1756
	7	39-71-608		5	2-15-1772
	8	39-71-703		6	37-3-103
	9	39-71-741		7	37-3-201
	10	39-71-743		8	37-3-205
	11	39-71-1006		9	37-3-301
	12	Repealer		10	37-3-303
	13	Effective date — applicability		11	37-3-304
104	1	61-5-111		12	37-3-306
105	1	2-15-1007		13	37-3-307
	2	Effective date		14	37-3-309
106	1	2-17-526		15	37-3-315
	2	17-7-111		16	37-3-323
107	1	Repealer		17	37-3-343
	2	Effective date		18	37-3-344
108	1	1-11-204		19	37-3-345
109	1	33-12-113		20	37-3-346
	2	Codification instruction		21	37-3-347
110	1	75-25-101		22	37-3-348
	2	75-25-102		23	37-3-349
	3	Effective date		24	37-4-103
111	1	2-18-1204		25	37-4-327
	2	Effective date		26	37-4-408
112	1	2-18-503		27	37-7-401
	2	Effective date		28	37-8-101
113	1	60-2-136		29	37-8-418
114	1	3-2-714		30	37-10-202
	2	15-1-121		31	37-10-301
	3	25-1-201 (Voided and replaced by sec. 9, Ch. 493)		32	37-10-302
	4	40-1-202 (Voided and replaced by sec. 10, Ch. 493)		33	37-10-304
	5	40-1-311 (Voided and replaced by sec. 11, Ch. 493)		34	37-10-306
	6	50-15-301		35	37-10-313
	7	Effective date		36	37-11-106
115	1	2-15-242		37	37-14-301
	2	22-2-106		38	37-17-104
	3	Implementation		39	37-18-104
	4	Codification instruction		40	37-19-101
	5	Effective date		41	37-35-202
116	1	61-3-460		42	37-60-202
	2	Effective date		43	37-60-302
117	1	85-1-602		44	37-60-303
	2	Effective date		45	37-60-304
118	1	41-3-422		46	Repealer
	2	41-3-428		47	Effective date
	3	41-3-429	127	1	82-4-206
119	1	31-1-705		2	82-4-223
	2	31-1-714		3	82-4-225
120	1	31-1-805		4	82-4-226
121	1	17-1-104		5	82-4-227
	2	17-3-110 (Renumbered 17-1-105)		6	82-4-231
	3	17-3-111 (Renumbered 17-1-106)		7	82-4-232
	4	Repealer		8	82-4-233
	5	Directions to code commissioner		9	82-4-235
	6	Codification instruction		10	82-4-251
	7	Effective date		11	Saving clause
122	1	Repealer		12	Effective date
			128	1	53-6-146
				2	Notification to tribal governments
				3	Codification instruction

MONTANA SESSION LAWS 2005

3328

129	4	Effective date	64	53-6-703
	1	75-2-225	65	53-7-109
	2	75-2-226	66	61-3-403
	3	Sec. 8, Ch. 516, L. 2001	67	61-3-522
130	4	Effective date	68	61-3-722
	5	Termination	69	61-4-223
	1	1-1-516	70	61-4-515
	2	2-2-106	71	61-4-520
	3	2-15-1821	72	61-8-906
	4	2-15-1822	73	61-8-913
	5	2-18-1204	74	61-10-227
	6	3-10-301	75	61-10-233
	7	5-7-112	76	71-3-534
	8	7-1-2111	77	72-1-103
	9	7-2-2422	78	82-15-103
	10	7-2-2424	79	85-7-304
	11	7-3-173	80	Repealer
	12	7-35-2121	81	Directions to code commissioner
	13	13-13-211	131	1 80-4-421
	14	15-1-121	2	80-4-606
	15	15-1-122	3	Effective date
	16	15-24-3005	4	Applicability
	17	15-30-111	132	1 20-5-322
	18	15-31-115	2	20-7-420
	19	15-61-102	3	20-9-707
	20	15-65-121	4	20-10-105
	21	15-70-301	5	Effective date
	22	16-1-101	133	1 39-9-201
	23	17-2-131	2	39-9-206
	24	17-5-507	3	39-71-201
	25	17-6-407	4	39-71-401
	26	20-3-351 (Voided by sec. 3, Ch. 91)	5	Effective date
	27	20-9-141	134	1 23-5-180
	28	20-9-501	2	23-5-181
	29	20-10-144	3	23-5-182
	30	20-10-146	4	23-5-183
	31	20-15-221	5	23-5-184
	32	20-20-303	6	23-5-185
	33	20-25-308	7	23-5-112
	34	23-2-502	8	23-5-113
	35	23-2-511	9	23-5-123
	36	23-2-514	10	23-5-152
	37	23-2-515	11	23-5-153
	38	23-2-521	12	23-5-412
	39	23-2-614	13	23-5-602
	40	27-1-306	14	23-5-621
	41	30-14-222	15	23-5-625
	42	30-14-223	16	Codification instruction
	43	30-14-901	17	Effective date
	44	30-14-1407	135	1 90-1-401
	45	33-22-140	2	90-1-402
	46	37-10-304	3	90-1-403
	47	39-11-201	4	90-1-404
	48	39-11-204	5	90-1-405
	49	39-71-1011	6	90-1-406
	50	39-71-1014	7	90-1-409
	51	39-71-2316	8	90-1-410
	52	40-5-906	9	90-1-411
	53	40-6-405 (Voided by sec. 2, Ch. 102)	10	90-1-413
	54	41-3-302	11	7-6-2230
	55	41-3-437	12	7-4-2632
	56	41-3-445	13	7-4-2637
	57	44-1-1102	14	Notification to tribal governments
	58	46-14-221	15	Codification instruction
	59	46-14-222	16	Effective date
	60	46-19-202	136	1 32-9-103
	61	50-20-101	2	32-9-115
	62	50-60-203	3	32-9-121
	63	52-2-304	4	32-9-130
			137	1 45-6-301

	2	45-9-107	160	1	Extension of natural resource
	3	45-9-131		2	damage program appropriation
	4	Effective date		3	Loan agreement
138	1	2-2-302		4	Three-fourths vote required
	2	20-1-101		5	Effective dates
	3	20-1-301	161	1	85-2-355
	4	20-1-302		2	85-2-113
	5	20-1-304		3	85-2-306
	6	20-2-115		4	85-2-322
	7	20-2-121		5	85-2-507
	8	20-3-324		6	85-2-508
	9	20-5-109		7	Codification instruction
	10	20-6-209		8	Effective date
	11	20-9-311	162	1	90-4-1101
	12	20-9-801		2	90-4-1102
	13	20-9-802		3	90-4-1103
	14	20-9-805		4	90-4-1104
	15	20-9-806		5	90-4-1105
	16	Effective date		6	90-4-1106
139	1	20-25-305		7	90-4-1107
	2	28-2-722		8	90-4-1108
140	1	33-17-102		9	90-4-1109
	2	39-71-107		10	20-9-204
	3	39-71-116		11	20-15-104
	4	39-71-225		12	7-5-2315
	5	39-71-307			7-5-4315
	6	39-72-102			7-12-2198
	7	Effective date			7-12-4198
141	1	39-71-605			18-8-210
	2	39-71-711		13	Codification instruction
	3	Effective date — applicability		14	Effective date
142	1	75-20-104	163	1	15-1-501
	2	Effective date		2	15-1-121
143	1	16-4-103		3	15-31-101
	2	Effective date		4	15-31-102
144	1	69-3-105		5	25-9-506
145	1	2-2-121		6	25-9-603
146	1	87-1-228		7	25-9-609
	2	Notification to tribal government		8	31-1-704
	3	Effective date		9	31-1-802
147	1	20-25-428		10	32-1-101
	2	Notification to tribal governments		11	32-1-102
	3	Effective date		12	32-1-202
148	1	22-3-107		13	32-1-301
	2	22-3-114		14	32-1-446
	3	Effective date		15	32-1-461
149	1	50-15-109		16	32-1-462
	2	50-15-223		17	32-1-464
	3	50-15-304		18	32-1-468
	4	Effective date		19	32-1-473
150	1	87-2-403		20	32-1-491
	2	Effective date		21	32-1-492
151	1	17-2-108		22	32-1-501
	2	20-8-107		23	Repealer
	3	Effective date	164	1	87-2-121
152	1	Repealer		2	Codification instruction
	2	Effective date		3	Effective date
153	1	46-5-228	165	1	7-4-2614
154	1	7-4-4604		2	Effective date
155	1	44-6-101	166	1	Repealer
	2	Effective date	167	1	3-6-106
	3	Retroactive applicability		2	3-6-201
156	1	20-5-403		3	3-6-204
157	1	87-4-606	168	1	7-14-2615
	2	Effective date		2	60-2-107
	3	Applicability		3	Effective date
158	1	26-1-802	169	1	39-11-103
	2	Effective date		2	39-11-201
159	1	72-31-201		3	39-11-202
				4	Sec. 10, Ch. 567, L. 2003

MONTANA SESSION LAWS 2005

3330

5	Repealer	198	1	7-1-2105
6	Effective date		2	7-1-4105
170	1 Appropriation		3	Repealer
	2 Effective date		4	Codification instruction
171	1 61-3-208	199	1	27-12-104
172	1 37-47-303		2	27-12-402
173	1 30-17-101		3	27-12-605
	2 30-17-102		4	Effective date
	3 2-2-121	200	1	52-2-304
	4 Codification instruction		2	53-21-1006
174	1 33-22-262	201	1	23-5-112
	2 Effective date	202	1	23-3-405
	3 Applicability		2	Effective date
175	1 7-16-2401	203	1	22-1-326
	2 7-16-2423		2	22-1-327
	3 7-16-2433		3	22-1-330
176	1 81-7-303		4	22-1-702
	2 81-7-603		5	22-1-705
	3 Effective date		6	22-1-707
177	1 39-2-206		7	22-1-716(1)
	2 39-2-207		8	22-1-716(2)
	3 39-2-209		9	22-1-716(3)
178	1 41-3-438		10	Codification instruction
	2 41-3-439	204	1	17-6-407
	3 41-3-445		2	Effective date
179	1 7-32-4122	205	1	33-28-105
180	1 61-5-107		2	33-28-201
181	1 90-1-151		3	33-28-207
	2 Codification instruction	206	1	33-2-701
	3 Effective date		2	Effective date — applicability
182	1 7-4-2503	207	1	2-15-401
183	1 45-5-624		2	30-9A-302
	2 Effective date		3	30-9A-501
184	1 53-4-209	208	1	20-1-102
	2 53-4-201		2	20-9-309
	3 53-4-212		3	20-1-101
	4 Notification to tribal governments		4	20-7-101
	5 Codification instruction		5	20-9-303
	6 Effective date		6	Repealer
185	1 45-6-313		7	Codification instruction
186	1 18-2-201		8	Severability
187	1 39-51-2111		9	Effective date
188	1 75-2-211	209	1	2-9-501
	2 Effective date		2	2-9-701
189	1 15-16-301		3	2-9-703
	2 15-24-210		4	2-9-803
	3 15-24-302		5	2-9-804
	4 Repealer		6	7-6-4005
	5 Effective date		7	Repealer
190	1 20-9-308		8	Effective date
	2 Effective date — applicability	210	1	31-1-715
	3 Termination		2	31-1-723
191	1 2-9-211		3	31-1-816
	2 33-2-302	211	1	87-3-126
	3 Effective date		2	Codification instruction
192	1 7-5-4302		3	Effective date
	2 7-5-4310	212	1	19-17-108
193	1 19-18-501	213	1	33-23-310
	2 19-18-503		2	Codification instruction
	3 19-18-504		3	Effective date
	4 Effective date	214	1	50-4-701
194	1 37-31-302		2	50-4-702
	2 37-31-312		3	50-4-703
	3 Effective date		4	50-4-704
195	1 33-10-105		5	50-4-707
	2 Applicability		6	50-4-708
196	1 20-3-325		7	50-4-709
	2 20-9-212		8	50-4-710
197	1 37-47-310		9	50-4-711
	2 37-47-311		10	50-4-712

215	11	50-4-713	226	1	60-4-213
	12	50-4-714		2	60-4-214
	13	50-4-715		3	60-4-215
	14	50-4-716		4	60-4-216
	15	50-4-717		5	60-4-217
	16	50-4-718		6	60-4-218
	17	50-4-719		7	60-2-107
	18	50-4-720		8	60-4-201
	19	35-2-609		9	60-4-202
	20	35-2-617		10	60-4-203
216	21	35-2-722	11	60-4-209	
	22	Codification instruction	12	Codification instruction	
	23	Effective date	13	Effective date	
	24	Applicability	227	1 87-1-111	
	1	20-1-101	2	87-1-115	
	2	20-5-322	3	Effective date	
	3	20-9-311	228	1 61-3-456	
	4	Effective date — applicability	229	1 27-1-739	
	1	60-1-211	2	Effective date	
	2	Codification instruction	3	Applicability	
217	3	Effective date	230	1 53-4-212	
	1	25-2-122	2	53-4-231	
	2	Effective date	3	Effective date	
	3	Applicability	231	1 7-12-4401	
	218	1 2-3-203	232	1 61-8-726	
	2	Effective date	2	3-10-601	
	219	1 2-16-107	3	46-17-402	
	2	Codification instruction	4	46-18-235	
	220	1 69-3-1501	5	Codification instruction	
	2	69-3-1502	233	1 61-1-102	
221	3	69-3-1503	2	61-1-103	
	4	Codification instruction	3	61-1-308	
	5	Effective date	4	61-8-501	
	1	5-5-230	5	61-8-506	
	2	90-4-1002	6	Repealer	
	3	90-4-1003	7	Coordination instruction	
	4	Effective date	234	1 23-1-117	
	222	1 46-12-201	2	Effective date	
	2	46-12-211	235	1 87-1-269	
	3	46-16-105	2	Sec. 18, Ch. 459, L. 1995	
223	4	46-16-123	3	Sec. 6, Ch. 544, L. 1999	
	5	46-18-102	4	Repealer	
	6	46-18-115	5	Coordination instruction	
	7	Effective date	6	Effective date	
	1	2-15-150	236	1 75-2-103	
	2	2-15-151	2	75-2-211	
	3	90-1-115	3	75-2-218	
	4	2-17-808	4	Effective date	
	5	17-7-502	237	1 23-2-502	
	6	61-3-473	2	23-2-511	
224	7	61-3-476	3	23-2-512	
	8	61-3-477	4	23-2-513	
	9	61-3-480	5	Effective date	
	10	Repealer	238	1 2-18-303	
	11	Performance of administration	2	Effective date	
	12	Codification instruction	3	Retroactive applicability	
	13	Effective dates	239	1 70-16-107	
	1	69-1-114	2	Repealer	
	2	69-1-402	240	1 7-6-206	
	3	Saving clause	2	Effective date	
225	4	Effective date	241	1 61-1-129	
	1	39-31-501	2	61-1-131	
	2	39-31-502	3	61-1-132	
	3	39-31-503	4	61-10-102	
	4	39-31-504	5	Coordination instruction	
	5	39-31-505	6	Effective date	
	6	7-32-4114	242	1 46-6-420	
	7	Codification instruction	2	Codification instruction	
	8	Saving clause	3	Effective date	
	9	Effective date	243	1 44-2-117	

244	2	Notification to tribal governments	2	2-4-405
	1	28-2-2104	3	Effective date
	2	28-2-2110	266	1 37-2-315
245	1	87-3-235	2	Codification instruction
	2	87-3-236	3	Applicability
	3	Effective date	267	1 16-4-105
246	1	27-1-746	2	16-4-201
	2	Codification instruction	3	Effective date
	3	Effective date	268	1 20-1-220
	4	Applicability	2	50-40-102
247	1	16-3-241	3	50-40-103
248	1	90-1-105	4	50-40-104
249	1	18-5-402	5	50-40-108
250	1	5-7-208	6	50-40-201
251	1	33-18-225	7	50-40-120
	2	Codification instruction	8	50-40-115
252	1	76-3-207	9	50-40-110
253	1	27-6-704	10	Repealer
	2	Effective date	11	Notification to tribal governments
	3	Applicability	12	Codification instruction
254	1	3-5-604	13	Nonseverability
	2	Effective date	14	Termination
255	1	20-7-402	269	1 Art. IV, sec. 8, Mont. Const
	2	20-7-403	2	Art. VI, sec. 1, Mont. Const
	3	20-7-411	3	Art. VI, sec. 2, Mont. Const
	4	20-7-414	4	Art. VI, sec. 3, Mont. Const
	5	20-7-420	5	Art. VI, sec. 4, Mont. Const
	6	20-7-431	6	Art. VI, sec. 6, Mont. Const
	7	20-7-443	7	Art. VI, sec. 7, Mont. Const
	8	20-7-461	8	Art. X, sec. 4, Mont. Const
	9	20-10-144	9	Submission to electorate
	10	Repealer	270	1 52-2-736
	11	Effective date	2	Codification instruction
256	1	69-8-402	271	1 7-32-2113
	2	Effective date	2	7-32-2114
257	1	39-71-905	3	19-7-410
	2	Repealer	4	Repealer
	3	Effective date	5	Codification instruction
	4	Retroactive applicability	272	1 30-14-2001
258	1	61-4-129	2	30-14-2002
	2	Coordination instruction	3	30-14-2003
259	1	19-7-101	4	30-14-2004
	2	19-7-301	5	30-14-2010
	3	19-7-302	6	30-14-2013
	4	Effective date	7	30-14-2015
260	1	39-8-102	8	Sec. 5, Ch. 125, L. 2005
	2	39-8-202	9	Severability
	3	39-8-204	10	Repealer
	4	39-8-206	11	Codification instruction
	5	39-8-207	12	Effective date
	6	39-8-302	273	1 15-31-603
	7	Effective date	274	1 1-1-526
261	1	7-3-1105	2	Codification instruction
	2	7-3-1222	275	1 13-17-103
	3	7-31-4110	2	Coordination instruction
	4	87-3-305	276	1 45-6-341
	5	Effective date	2	Codification instruction
262	1	37-15-101	277	1 41-5-206
	2	37-15-102	2	45-9-102
	3	37-15-103	3	53-1-203
	4	37-15-303	278	1 82-4-367
	5	37-15-304	2	75-10-743
	6	37-15-307	3	Codification instruction
	7	37-15-313	4	Notification to tribal government
263	1	33-15-1103	5	Effective date
	2	33-15-1105	279	1 30-12-701
	3	33-23-401	2	30-12-702
264	1	13-19-104	3	30-12-703
	2	Effective date		30-12-704
265	1	2-4-303	4	30-12-705

	5	30-12-706		7	13-13-201
	6	Codification instruction		8	13-13-205
	7	Severability		9	13-13-212
	8	Contingent voidness		10	13-13-213
	9	Effective dates		11	13-13-232
280	1	30-14-102		12	13-13-233
	2	30-14-121		13	13-13-241
	3	30-14-131		14	13-13-243 (Renumbered 13-15-108)
	4	30-14-143		15	13-15-107
	5	30-14-201		16	13-15-201
	6	30-14-202		17	13-17-103
	7	30-14-220		18	13-17-212
	8	30-14-222		19	Repealer
	9	30-14-226		20	Instruction to code commissioner
	10	30-14-1403		21	Effective dates
	11	30-14-1407	287	1	53-6-1004
	12	30-14-1412		2	53-6-1005
	13	30-14-1413		3	53-6-1006
	14	30-14-1601		4	53-6-1001
	15	30-14-1603		5	53-6-1002
	16	61-4-507		6	53-6-1003
	17	61-4-511		7	53-6-1010
	18	61-4-512		8	53-6-1013
	19	61-4-515		9	53-6-1201 (Replaced by sec. 13, Ch. 287)
	20	61-4-516		10	53-6-1020
	21	61-4-517		11	Repealer
	22	61-4-518		12	Codification instruction
	23	61-4-519		13	Coordination instruction
	24	61-4-520		14	Effective date
	25	61-4-525	288	1	85-2-270
	26	61-4-526		2	85-2-271
	27	61-4-532		3	85-2-272
	28	Transition		4	85-2-273
	29	Notification to tribal governments		5	85-2-276
	30	Code commissioner instruction		6	85-2-279
	31	Effective date		7	85-2-280
281	1	87-5-703		8	85-2-281
	2	87-5-704		9	85-2-282
	3	87-5-709		10	85-2-283
	4	87-5-712		11	15-1-216
	5	87-5-721		12	85-2-231
	6	Effective date		13	85-2-237
282	1	46-1-1101		14	Codification instruction
	2	46-1-1102		15	Contingent voidness
	3	46-1-1103		16	Notification to tribal governments
	4	46-1-1104		17	Effective date
	5	46-1-1110		18	Termination
	6	46-1-1111	289	1	18-4-126
	7	46-1-1112		2	18-4-132
	8	46-1-1113		3	18-4-301
	9	46-1-1114		4	18-4-303
	10	Codification instruction		5	18-4-304
	11	Severability		6	18-4-308
	12	Saving clause		7	18-4-312
	13	Effective date		8	18-4-313
283	1	2-15-1019		9	Repealer
	2	Effective date — applicability		10	Effective date
284	1	13-13-212	290	1	33-22-150
	2	13-13-214		2	33-22-151
	3	Effective date		3	33-22-101
285	1	2-8-301		4	Codification instruction
	2	2-8-302		5	Effective date — applicability
	3	2-8-303	291	1	30-14-108
	4	5-13-203		2	30-14-102
286	1	13-2-304		3	Codification instruction
	2	13-2-108		4	Saving clause
	3	13-2-110	292	1	45-5-214
	4	13-2-115	293	1	16-4-304
	5	13-2-301		2	16-4-501
	6	13-2-514			

	3	Effective date	20	67-10-102
294	1	2-15-1745	21	67-10-202
	2	37-48-101	22	67-10-231
	3	37-48-102	23	67-10-402
	4	37-48-103	24	67-10-902
	5	Codification instruction	25	67-11-103
	6	Effective date	26	67-11-201
295	1	Time limits	27	67-11-241
	2	Appropriations — authorization to	28	70-30-102
		expend money	29	Repealer
	3	Effective date	30	Codification instruction
296	1	61-5-301	31	Effective date
297	1	61-5-131	32	Applicability
	2	61-5-132	301	1 32-9-102
	3	61-5-133		2 32-9-104
	4	61-5-134		3 32-9-109
	5	61-5-135	302	1 76-3-504
	6	61-5-106		2 76-3-511
	7	61-5-111		3 76-3-601
	8	Codification instruction		4 76-3-622
	9	Effective date		5 76-3-604
	10	Applicability		6 76-3-608
298	1	76-3-103		7 76-4-104
	2	76-3-501		8 76-4-125
	3	76-3-504		9 Codification instruction
	4	76-3-601	303	1 37-73-101
	5	76-3-602		2 37-73-102
	6	76-3-603		3 37-73-201
	7	76-3-604		4 37-73-202
	8	76-3-605		5 37-73-203
	9	76-3-615		6 37-73-204
	10	76-3-608		7 37-73-208
	11	76-3-609		8 37-73-212
	12	76-3-610		9 37-73-216
	13	76-3-620		10 37-73-220
	14	76-3-625		11 37-73-221
	15	76-4-127 (Replaced by sec. 2, Ch.		12 37-73-225
		433)		13 37-73-226
	16	Repealer		14 37-73-227
	17	Codification instruction		15 50-60-704
	18	Effective date		16 50-60-705
	19	Applicability		17 50-60-706
299	1	7-6-1601		18 50-60-709
	2	7-6-1602		19 50-60-711
	3	7-6-1603		20 50-60-715
	4	7-6-1604		21 50-60-716
	5	Transition		22 50-60-720
	6	Codification instruction		23 50-60-115
	7	Saving clause		24 Repealer
	8	Effective date		25 Codification instruction
	9	Applicability		26 Effective dates
300	1	7-14-4801	304	1 53-20-220
	2	67-1-101		2 Codification instruction
	3	67-7-101		3 Effective date
	4	67-7-102		4 Termination
	5	67-7-103	305	1 19-13-104
	6	67-7-201		2 19-13-704
	7	67-7-202		3 19-13-803
	8	67-7-203		4 19-13-902
	9	67-7-204		5 Effective date
	10	67-7-208		6 Applicability
	11	67-7-209	306	1 20-5-420
	12	67-7-210		2 Codification instruction
	13	67-7-211		3 Two-thirds vote required
	14	67-7-212		4 Effective date
	15	67-7-301	307	1 Appropriations from renewable
	16	67-7-302		resource grant and loan program
	17	67-7-303		state special revenue account
	18	67-7-304		2 Conditions of grants
	19	67-7-305		3 Conditions for grants

4	Appropriations established	317	1	Prevention program voted levy
5	Review of previously authorized grants		2	(Voided by sec. 3, Ch. 317)
6	Fund transfer		3	Codification instruction
7	85-1-604		4	Coordination instruction
8	Severability	318	1	Effective date
9	Notification to tribal governments		2	15-6-218
10	Effective dates		3	15-30-1114
11	Termination		3	Effective date
308	1 Appropriations for reclamation and development grants	319	1	23-5-602
2	Approved grants and projects		2	23-5-610
3	Coordination of fund sources for grants program projects		3	23-5-611
4	Condition of grants		4	23-5-621
5	Other appropriations		5	23-5-637
6	Fund transfers	320	6	Repealer
7	90-2-1104		7	Effective date
8	Severability		1	19-20-208
9	Effective date		2	19-20-212
10	Termination		3	19-20-302
309	1 Approval of renewable resource projects and authorization to provide loans		4	19-20-401
2	Projects not completing requirements — projects reauthorized		5	19-20-407
3	Coal severance tax bonds authorized		6	19-20-415
4	Conditions of loans		7	19-20-426
5	Private and discount purchase of loans		8	19-20-602
6	Appropriation established		9	19-20-427
7	Creation of state debt — appropriation of coal severance tax — bonding provisions		10	19-20-716
8	Severability		11	19-20-718
9	Effective date		12	19-20-802
310	1 90-4-605		13	19-20-804
2	Bond authorization — appropriation		14	19-20-731
3	Approval of energy conservation projects		15	19-20-806
4	Appropriation of bond proceeds		16	19-20-1001
5	Two-thirds vote required		17	Sec. 29, Ch. 111, L. 1999
6	Effective date		18	Codification instruction
311	1 5-2-203		19	Effective date
2	Effective date		20	Retroactive applicability
3	Retroactive applicability	321	1	2-17-803
312	1 17-8-231		2	2-17-804
2	45-7-210		3	2-17-805
3	Effective date		4	2-17-811
313	1 46-23-502		5	2-17-812
2	46-23-504		6	2-17-817
3	46-23-505		7	Effective date
4	46-23-506	322	1	Repealer
5	46-23-509		2	Effective date
314	1 17-7-502	323	1	17-5-805
2	23-4-105		2	75-5-1122
3	23-4-202		3	75-6-226
4	23-4-204		4	75-6-227
5	23-4-302		5	Two-thirds vote required
6	23-4-304		6	Coordination instruction
7	Effective date		7	Effective date
315	1 61-3-721 (Replaced by sec. 159, Ch. 596)	324	1	16-11-402
2	Coordination instruction (Voided by sec. 159, Ch. 596)		2	16-11-404
3	Effective date		3	16-11-502
316	1 2-2-302		4	16-11-503
			5	16-11-507
			6	16-11-509
			7	16-11-511
			8	17-7-502
			9	17-7-502
			10	Effective dates
			11	Contingent voidness
		325	1	15-1-122
			2	Sec. 50, Ch. 592, L. 2003
			3	Effective date
			4	Retroactive applicability
		326	1	87-1-601
			2	Effective date
		327	1	17-7-502
			2	23-5-631

MONTANA SESSION LAWS 2005

3336

	3	Effective date		68	19-17-108
328	1	3-2-303		69	19-17-407
	2	Effective date		70	19-19-205
329	1	19-2-303		71	19-50-103
	2	19-2-502		72	19-50-104
	3	19-2-602		73	44-1-515
	4	19-2-703		74	44-1-518
	5	19-2-704		75	Effective date
	6	19-2-706	330	1	Definitions
	7	19-2-903		2	Appropriation of bond proceeds and other funds
	8	19-2-907		3	Authorization of bonds
	9	19-2-908		4	Agreement with department of transportation
	10	19-2-909		5	Planning and design
	11	19-3-108		6	Capital projects — contingent funds
	12	19-3-112		7	Legislative consent
	13	19-3-201		8	Requirement for approval of state debt
	14	19-3-316		9	Severability
	15	19-3-318		10	Effective date
	16	19-3-319	331	1	45-8-110
	17	19-3-401		2	Codification instruction
	18	19-3-403	332	1	19-17-102 (Voided by sec. 4, Ch. 332)
	19	19-3-412		2	19-17-401 (Voided by sec. 4, Ch. 332)
	20	19-3-505		3	33-22-136 (Voided by sec. 4, Ch. 332)
	21	19-3-908		4	Coordination instruction
	22	19-3-1002		5	Effective date
	23	19-3-1005	333	1	7-16-2324
	24	19-3-1015		2	76-3-621
	25	19-3-1204	334	1	80-10-503
	26	19-3-1501		2	80-10-510
	27	19-3-2104		3	Appropriation
	28	19-3-2111		4	Codification instruction
	29	19-3-2112		5	Effective date
	30	19-3-2114		6	Termination
	31	19-3-2116	335	1	77-1-202
	32	19-3-2117		2	77-1-904
	33	19-3-2121		3	77-2-310
	34	19-3-2126		4	Effective date
	35	19-5-103	336	1	7-7-110
	36	19-5-402		2	60-2-127
	37	19-5-404		3	Codification instruction
	38	19-5-410		4	Effective date
	39	19-5-701	337	1	75-1-202
	40	19-5-902		2	75-1-205
	41	19-6-301		3	75-1-207
	42	19-6-402		4	75-1-208
	43	19-6-404		5	75-2-104
	44	19-6-505		6	75-2-211
	45	19-6-709		7	75-10-922
	46	19-7-301		8	75-20-201
	47	19-7-403		9	75-20-216
	48	19-7-404		10	75-20-401
	49	19-7-801		11	75-20-406
	50	19-7-1001		12	76-4-125
	51	19-8-301		13	82-4-122
	52	19-8-502		14	82-4-231
	53	19-8-504		15	82-4-337
	54	19-8-801		16	82-4-349
	55	19-9-301		17	82-4-427
	56	19-9-703		18	82-4-436
	57	19-9-710		19	85-2-124
	58	19-9-804		20	85-2-310
	59	19-9-902		21	Effective date
	60	19-9-905		22	Applicability
	61	19-9-1202			
	62	19-9-1207			
	63	19-9-1208			
	64	19-13-301			
	65	19-13-605			
	66	19-13-802			
	67	19-13-805			

338	1	Sec. 6, Ch. 590, L. 2003	2	Effective date
339	1	Appropriation for dental school feasibility study	353	1 53-6-101
340	1	76-2-209	2	53-6-401
2		Effective date	3	53-6-402
341	1	7-13-2204	4	Directions to code commissioner
2		7-13-2208	5	Severability
3		7-13-2212	6	Effective date
4		7-13-2215	354	1 10-3-901
5		7-13-2231	2	10-3-902
6		7-13-2282	3	10-3-903
7		7-13-2302	4	10-3-904
8		7-13-2321	5	10-3-905
9		7-13-2328	6	10-3-906
10		7-13-2329	7	10-3-907
11		7-13-2290	8	10-3-908
12		7-13-2333	9	10-3-909
13		7-13-2349	10	10-3-910
14		Severability	11	10-3-911
15		Codification instruction	12	10-3-912
16		Effective date	13	10-3-1204
342	1	61-10-107	14	Codification instruction
2		Contingent voidness	15	Two-thirds vote required — contingent voidness
343	1	87-3-237	16	Notification to tribal governments
2		Codification instruction	17	Saving clause
3		Effective date	18	Severability
344	1	61-3-318	19	Effective date
345	1	39-71-4001	20	Applicability
2		39-71-4002	21	Transition
3		39-71-4003	355	1 75-10-704
4		39-71-4004	2	75-10-743
5		39-71-704	3	Contingent transfer of orphan share funds — appropriation
6		Appropriation	4	Effective date
7		Codification instruction	356	1 2-15-2108
8		Effective date — applicability	2	75-11-308
346	1	2-15-225	3	75-11-309
347	1	2-4-603	4	75-11-312
2		2-4-614	5	75-11-318
3		2-4-623	6	Saving clause
4		2-4-702	7	Effective date
348	1	61-8-460	357	1 Repealer
2		61-8-461	358	1 61-5-101
3		Codification instruction	359	1 13-13-204
349	1	41-3-102	2	13-13-243
2		41-3-205	360	1 46-18-206
3		41-3-432	2	46-23-1010
4		41-3-437	3	46-23-1031 (Voided by sec. 6, Ch. 360)
5		41-3-609	4	Interim report to legislature
6		Notification to tribal governments	5	Codification instruction
350	1	53-2-101	6	Coordination instruction
2		53-4-601	7	Severability
3		53-2-215	8	Effective date (Replaced by sec. 3, Ch. 473)
4		Codification instruction	361	1 46-18-236
5		Coordination instruction	362	1 60-2-140
6		Severability	2	Notification to tribal governments
7		Effective date	3	Codification instruction
351	1	33-20-1401	363	1 33-18-601
2		33-20-1402	2	33-18-602
3		33-20-1403	3	33-18-603
4		33-20-1404	4	33-18-604
5		33-20-1405	5	33-18-605
6		33-20-1406	6	33-18-606
7		33-20-1407	7	33-18-607
8		33-20-1408	8	33-18-608
9		33-20-1409	9	33-18-609
10		33-20-1410	10	33-18-610
11		33-20-1411	11	33-18-611
12		33-20-1412		
13		Applicability		
352	1	90-6-715		

MONTANA SESSION LAWS 2005

3338

	12	33-18-210		378	1	87-2-731
	13	Codification instruction			2	Notification to tribal governments
	14	Severability			3	Codification instruction
	15	Applicability			4	Effective date
364	1	45-2-101			5	Termination
	2	45-5-625		379	1	15-8-111
365	1	50-5-101			2	15-8-511
	2	50-5-245			3	15-8-512
	3	Codification instruction			4	Effective date
	4	Contingent effective date			5	Retroactive applicability
	5	Applicability		380	1	53-6-110
	6	Termination			2	Effective date
366	1	15-70-233		381	1	10-1-1001
	2	15-70-357			2	10-1-1002
	3	19-8-101			3	10-1-1003
	4	44-1-1005			4	10-1-1004
	5	44-4-301			5	10-1-1005
	6	44-4-302			6	10-1-1006
	7	61-9-512			7	10-1-1007
	8	61-10-154			8	10-1-1008
	9	61-10-141			9	10-1-1010
	10	61-12-205			10	10-1-1015
	11	61-12-206			11	10-1-1016
	12	61-12-208			12	10-1-1017
	13	76-13-601			13	10-1-1018
	14	Codification instruction			14	10-1-1019
	15	Contingent voidness			15	10-1-1020
367	1	13-1-116			16	10-1-1021
	2	13-3-205			17	10-1-1022
	3	13-13-114			18	10-1-1027
	4	13-13-119			19	2-16-112
	5	13-13-213			20	2-16-501
	6	13-13-214			21	7-4-2208
	7	Codification instruction			22	10-1-604 (Renumbered 10-1-1009)
368	1	32-9-117			23	10-1-615
	2	32-9-122			24	19-2-707
	3	Effective date			25	39-51-1214
369	1	19-2-803			26	39-51-2302
	2	Effective date			27	Repealer
370	1	2-4-306			28	Instructions to code commissioner
	2	2-15-401			29	Codification instruction
371	1	Quality schools interim committee			30	Effective date
		— duties		382	1	41-3-112
	2	Effective date			2	41-3-115
372	1	1-1-520			3	41-3-201
	2	Codification instruction			4	41-3-202
	3	Effective date			5	41-3-438
373	1	3-5-102			6	41-3-443
	2	Provisional appointment —			7	41-3-445
		election			8	41-3-1010
	3	Effective date			9	42-6-102
374	1	17-5-302			10	Effective date
	2	17-5-304		383	1	53-1-409
	3	17-5-802			2	Effective date
	4	17-5-803		384	1	15-70-302
	5	17-5-805			2	15-70-321
	6	18-2-101			3	15-70-323
	7	Repealer			4	15-70-325
	8	Saving clause			5	15-70-330
	9	Effective date			6	15-70-356
375	1	15-18-411			7	15-70-372
376	1	15-6-133		385	1	82-15-102
	2	15-7-202			2	82-15-104
	3	15-10-420			3	82-15-106
	4	Coordination instruction			4	82-15-110
	5	Applicability			5	82-15-111
377	1	15-67-101			6	82-15-120
	2	15-67-102			7	Codification instruction
	3	Effective date			8	Effective date
	4	Retroactive applicability		386	1	50-48-101

2	50-48-102	403	1	75-5-801
3	50-48-103		2	75-5-802
4	50-48-203		3	75-5-803
5	50-48-106		4	Codification instruction
6	50-48-107		5	Effective date
7	50-48-108		6	Retroactive applicability
8	50-48-109	404	1	50-1-211
9	50-48-110		2	Codification instruction
10	50-48-201		3	Effective date
11	50-48-202		4	Termination
12	50-48-204	405	1	20-9-501
13	50-48-205		2	Effective date — retroactive applicability
14	50-48-206	406	1	53-6-803
15	50-48-209		2	Repealer
16	45-5-623	407	1	33-18-224
17	50-1-202		2	33-18-1006
18	50-2-116	408	1	3-2-714
19	50-2-130		2	25-1-201
20	Codification instruction	409	1	33-1-501
21	Effective date		2	33-31-301
387	1 2-15-3330		3	Effective date
	2 Repealer		4	Applicability
	3 Effective date	410	1	72-3-220
388	1 60-1-212		2	72-3-320
	2 Codification instruction		3	72-3-203
389	1 37-51-313		4	72-3-212
	2 37-51-314		5	72-3-301
	3 37-51-321		6	Codification instruction
	4 37-51-602		7	Effective date
390	1 2-6-112		8	Retroactive applicability
	2 Codification instruction	411	1	45-5-209
	3 Effective date		2	46-6-311
	4 Applicability		3	46-9-108
391	1 19-17-401		4	Codification instruction
	2 19-17-404	412	1	27-2-209
	3 Effective date	413	1	71-1-303
392	1 15-16-403		2	71-1-308
	2 25-1-1101		3	71-1-309
	3 25-3-301		4	71-1-310
	4 25-9-205		5	71-1-307
	5 25-13-402		6	Codification instruction
	6 27-1-717		7	Applicability
	7 28-1-1001	414	1	7-32-2226
393	1 7-6-1541		2	Effective date
	2 7-6-1544	415	1	15-35-103
	3 7-6-1546		2	Effective date
394	1 61-6-304	416	1	39-71-124
	2 Effective date		2	39-71-713
395	1 7-22-2154		3	39-71-714
	2 Codification instruction		4	39-71-715
	3 Effective date		5	39-71-716
396	1 33-2-712		6	2-15-2015
	2 50-19-211		7	30-9A-109
	3 50-19-212		8	37-1-131
	4 Codification instruction		9	39-71-105
397	1 15-70-311		10	39-71-106
	2 15-70-312		11	39-71-107
	3 Effective date		12	39-71-116
398	1 7-1-4150		13	39-71-201
	2 Coordination instruction		14	39-71-206
399	1 17-5-1612		15	39-71-211
	2 Codification instruction		16	39-71-315
	3 Effective date		17	39-71-316
400	1 37-51-312		18	39-71-317
401	1 7-12-2109		19	39-71-403
	2 7-12-4110		20	39-71-407
	3 7-12-4114		21	39-71-416 (Voided by sec. 40, Ch. 416)
	4 Effective date		22	39-71-525
402	1 85-7-1501			
	2 Effective date			

23	39-71-601	6	15-1-501
24	39-71-603	7	19-6-401
25	39-71-612	8	19-6-404
26	39-71-743	9	44-1-1005
27	39-71-915	10	61-1-134
28	39-71-1105	11	61-1-137
29	39-71-2401	12	61-1-505
30	39-71-2406	13	61-5-103
31	39-71-2408	14	61-5-104
32	39-71-2411	15	61-5-105
33	39-73-104	16	61-5-107
34	39-73-107	17	61-5-110
35	45-6-301	18	61-5-111
36	71-3-1118	19	61-5-112
37	85-5-101	20	61-5-114 (Replaced by sec. 163, Ch. 596)
38	Repealer	21	61-5-119
39	Codification instruction	22	61-5-121 (Voided by sec. 164, Ch. 596)
40	Coordination instruction	23	61-5-125
41	Direction to code commissioner	24	61-5-201
42	Severability	25	61-5-213
43	Effective date — applicability	26	61-8-725
417	1 61-8-351	27	61-8-802
	2 61-8-715	28	61-8-803
418	3 Effective date	29	61-8-807
	1 85-1-613	30	61-8-812
	2 Termination	31	61-11-101
419	1 Repealer	32	61-11-102
420	1 37-61-211	33	61-11-203
	2 Effective date	34	Repealer
421	1 2-18-303 (Replaced by sec. 7, Ch. 421)	35	Codification instruction
	2 17-7-502	36	Coordination instruction
	3 61-3-321	37	Coordination instruction
	4 44-1-504	38	Coordination instruction
	5 17-7-160	39	Severability
	6 Codification instruction	40	Effective dates
	7 Coordination instruction	41	Retroactive applicability
	8 Coordination instruction	429	1 52-3-825
	9 Coordination instruction	430	1 87-1-209
	10 Effective dates		2 87-1-301
422	1 41-3-301		3 Effective date
	2 41-3-427	431	1 40-5-206
423	1 41-5-103		2 40-5-208
	2 41-5-215		3 40-5-225
	3 41-5-216		4 40-5-226
	4 41-5-220		5 40-5-247
	5 41-5-221		6 40-5-412
	6 41-5-1524		7 40-5-810
	7 41-5-2510		8 40-5-812
	8 Codification instruction		9 40-5-813
424	1 87-3-307		10 53-9-129
	2 Effective date		11 Effective date
425	1 75-10-621	432	1 7-6-2601
	2 75-10-704		2 7-6-4501
	3 75-10-743		3 17-8-311
	4 Effective date		4 Effective date
426	1 45-5-106	433	1 76-4-127 (Replaced by sec. 2, Ch. 433)
	2 61-8-714		2 Coordination instruction
	3 61-8-722	434	1 85-2-350
	4 Codification instruction		2 Repealer
	5 Coordination instruction		3 Effective date
	6 Effective date	435	1 45-8-213
427	1 30-16-201	436	1 37-2-107
	2 30-16-302		2 Time for adopting rules
	3 30-16-303		3 Codification instruction
428	1 61-5-220		4 Applicability
	2 61-5-221	437	1 2-2-121
	3 61-8-815		2 13-35-226
	4 61-8-816		
	5 61-8-817		

	3	Effective date	12	47-1-216
438	1	20-3-322	13	47-1-110
439	1	Appropriation	14	47-1-111
	2	Effective date	15	41-3-425
440	1	31-2-341	16	2-18-103
	2	Effective date	17	3-5-511
441	1	16-3-321	18	3-5-604
	2	16-3-322	19	3-5-901
	3	16-3-323	20	7-6-2426
	4	16-3-324	21	15-1-121
	5	Codification instruction	22	18-4-132
442	1	53-24-107	23	26-2-501
	2	53-24-303	24	26-2-506
	3	Effective date	25	26-2-508
443	1	75-10-227	26	26-2-510
	2	75-10-228 (Voided and replaced by sec. 9, Ch. 443)	27	40-5-236
	3	75-10-540	28	40-6-119
	4	75-10-542 (Voided and replaced by sec. 10, Ch. 443)	29	41-3-205
	5	75-11-218	30	41-3-422
	6	75-11-223	31	41-3-423
	7	76-4-108	32	41-3-432
	8	76-4-109	33	41-3-607
	9	Coordination instruction	34	41-3-1010
	10	Coordination instruction	35	41-3-1012
	11	Coordination instruction	36	41-5-111
	12	Saving clause	37	41-5-1413
	13	Effective date	38	42-2-405
444	1	7-1-2121	39	46-4-304
445	1	3-1-317	40	46-8-101
	2	3-1-702	41	46-8-104
	3	Repealer	42	46-8-113
	4	Effective date	43	46-8-114
446	1	13-2-222	44	46-8-115
	2	13-2-512	45	46-12-210
447	1	50-9-501	46	46-14-202
	2	50-9-502	47	46-14-221
	3	50-9-503	48	46-15-115
	4	50-9-504	49	46-15-116
	5	50-9-505	50	46-17-203
	6	Appropriation	51	46-18-101
	7	Codification instruction	52	46-18-201
	8	Effective date	53	46-21-201
448	1	39-71-417	54	50-20-212
	2	39-71-418	55	53-9-104
	3	39-71-419	56	53-20-125
	4	39-8-102	57	53-21-112
	5	39-51-201	58	53-21-116
	6	39-51-204	59	53-21-122
	7	39-71-105	60	53-24-302
	8	39-71-117	61	53-30-110
	9	39-71-401	62	61-8-731
	10	39-71-409	63	72-5-225
	11	39-71-415	64	72-5-234
	12	39-72-102	65	72-5-315
	13	Repealer	66	72-5-322
	14	Codification instruction	67	72-5-408
	15	Effective date — applicability	68	Implementation
449	1	47-1-101	69	Transition — transfer of county and city employees to state employment — rights
	2	47-1-103	70	Transition of appellate defender commission and office
	3	47-1-102	71	Rights to property
	4	47-1-104	72	Implementation — determination of actual costs — legislative audit — report
	5	2-15-1028	73	Interim report
	6	47-1-105	74	Repealer
	7	47-1-201	75	Codification instruction
	8	47-1-202	76	Directions to code commissioner
	9	47-1-205		
	10	47-1-210		
	11	47-1-215		

	77	Coordination instruction	16	22-1-304
	78	Saving clause	17	50-2-111
	79	Three-fifths vote required	18	53-21-1010
	80	Effective dates	19	67-10-402
450	1	15-1-116	20	81-8-504
	2	15-1-118	21	Repealer
	3	70-1-106	22	Codification instruction
	4	Repealer	23	Effective date
	5	Codification instruction	454	1 15-50-207
451	1	7-7-104		2 Effective date
	2	7-7-109		3 Retroactive applicability
	3	7-7-2206	455	1 15-32-115
	4	7-7-2207		2 Effective date
	5	7-7-2211		3 Applicability
	6	7-7-2304	456	1 33-1-318
	7	7-7-4206		2 33-1-1301
	8	7-7-4210		3 33-1-1302
	9	7-7-4304		4 33-38-101
	10	7-7-4502		5 33-38-102
	11	7-12-2113		6 33-38-103
	12	7-12-2193		7 33-38-104
	13	7-12-4194		8 33-38-105
	14	7-13-4309		9 33-38-106
	15	7-14-4109		10 33-38-107
	16	7-16-2443		11 33-38-108
	17	17-5-103		12 Repealer
	18	20-9-408		13 Codification instruction
	19	20-9-410		14 Applicability
	20	20-9-464	457	1 69-8-1001
	21	17-5-111		2 69-8-1002
	22	7-12-4195		3 69-8-1003
	23	Codification instruction		4 69-8-1004
	24	Effective date		5 69-8-1005
452	1	82-15-121		6 69-8-1006
	2	82-15-122		7 69-8-1007
	3	15-70-201		8 69-8-1008
	4	15-70-204		9 Saving clause
	5	15-70-503		10 Severability
	6	15-70-522		11 Codification instruction
	7	17-6-317		12 Effective date
	8	82-15-101	458	1 61-1-101(10), (23), (38), (60), (64)
	9	82-15-102		2 61-3-213
	10	82-15-103		3 61-3-320
	11	82-15-104		4 61-3-301
	12	82-15-106		5 61-3-411
	13	82-15-110		6 61-9-204
	14	82-15-123		7 61-9-407
	15	82-15-111		8 61-9-430
	16	Sec. 12, Ch. 568, L. 2001		9 Codification instruction
	17	Sec. 13, Ch. 568, L. 2001		10 Coordination instruction
	18	Repealer		11 Effective date
	19	Codification instruction	459	1 Time limits
	20	Effective date		2 Appropriations
	21	Contingent termination		3 Effective date
453	1	7-1-2103	460	1 90-1-131
	2	7-1-4123		2 Appropriation
	3	7-6-2501		3 Sec. 19, Ch. 512, L. 1999
	4	7-6-2521		4 Sec. 5, Ch. 69, L. 2001
	5	7-6-2522		5 Notification to tribal governments
	6	7-6-2524		6 Effective date
	7	7-6-2527 (Replaced by sec. 3, Ch. 317)	461	1 75-10-1301
	8	7-6-4401		2 75-10-1302
	9	7-6-4421		3 75-10-1303
	10	7-7-4104		4 75-10-1304
	11	7-13-144		5 75-10-1305
	12	7-13-3027		6 75-10-1306
	13	7-21-3410		7 Codification instruction
	14	15-16-101	462	1 20-5-323
	15	15-16-117		2 20-6-607
				3 20-7-102

	4	20-7-102		10	39-51-1301
	5	20-9-130		11	39-51-1303
	6	20-9-131		12	39-51-2102
	7	20-9-142		13	39-51-2104
	8	20-9-151		14	39-51-2402
	9	20-9-152		15	Coordination instruction
	10	20-9-306		16	Effective dates
	11	20-9-306	467	1	23-3-501
	12	20-9-308		2	23-4-105
	13	20-9-311		3	23-4-201
	14	20-9-314		4	27-12-206
	15	20-9-321		5	33-30-1013
	16	20-9-353		6	37-1-101
	17	20-9-366		7	37-1-104
	18	20-9-406		8	37-1-105
	19	20-9-443		9	37-1-121
	20	Extension of school election		10	37-1-130
		deadlines		11	37-1-131
	21	20-3-363		12	37-1-134
	22	Repealer		13	37-1-141
	23	Codification instruction		14	37-1-302
	24	Effective dates — applicability		15	37-1-306
	25	Termination		16	37-1-307
463	1	20-3-205		17	37-2-101
	2	20-5-321		18	37-3-203
	3	20-5-324		19	37-3-211
	4	20-7-420		20	37-3-301
	5	20-9-212		21	37-3-305
	6	20-9-335		22	37-3-306
	7	20-10-105		23	37-3-307
	8	Appropriation		24	37-3-309
	9	Effective date		25	37-3-311
464	1	19-6-410		26	37-3-313
	2	15-1-122		27	37-3-341
	3	17-7-502		28	37-3-342
	4	19-6-401		29	37-3-343
	5	19-6-404		30	37-3-344
	6	19-6-709		31	37-3-347
	7	61-3-527		32	37-4-301
	8	61-3-530		33	37-4-307
	9	61-3-562		34	37-4-402
	10	61-5-121 (Replaced by sec. 164, Ch. 596)		35	37-4-406
	11	Transfer of funds		36	37-6-304
	12	Codification instruction		37	37-7-104
	13	Effective date		38	37-7-302
	14	Termination		39	37-7-321
465	1	17-8-401		40	37-7-605
	2	17-8-402		41	37-7-606
	3	17-8-403		42	37-8-102
	4	17-8-404		43	37-8-202
	5	17-8-405		44	37-8-204
	6	17-8-406		45	37-9-304
	7	17-8-407		46	37-9-305
	8	17-8-408		47	37-10-302
	9	17-8-409		48	37-10-304
	10	17-8-410		49	37-11-201
	11	17-8-411		50	37-11-304
	12	17-8-412		51	37-12-201
	13	Repealer		52	37-12-302
	14	Applicability		53	37-13-302
466	1	39-51-201		54	37-14-306
	2	39-51-204		55	37-16-202
	3	39-51-301		56	37-16-405
	4	39-51-302		57	37-17-302
	5	39-51-409		58	37-18-202
	6	39-51-1110		59	37-19-401
	7	39-51-1206		60	37-19-702
	8	39-51-1218		61	37-19-807
	9	39-51-1219		62	37-20-301
				63	37-20-302

MONTANA SESSION LAWS 2005

3344

64	37-22-201	2	Electric personal assistive mobility device (Voided by sec. 12, Ch. 468) (Enacted as 61-1-101(17))
65	37-22-301	3	61-8-375
66	37-22-302	4	61-8-376
67	37-23-101	5	33-23-204
68	37-23-202	6	61-1-102
69	37-23-203	7	61-1-105
70	37-23-206	8	61-1-106
71	37-24-202	9	61-12-101
72	37-24-303	10	Codification instruction
73	37-24-310	11	Coordination instruction
74	37-25-201	12	Coordination instruction
75	37-26-201	13	Coordination instruction
76	37-26-403	14	Coordination instruction
77	37-27-105	15	Effective date
78	37-27-210	469	1 30-10-115
79	37-28-104	2	30-10-209
80	37-28-202	3	33-2-305
81	37-29-306	4	33-2-523
82	37-31-203	5	33-2-701
83	37-31-302	6	33-3-431
84	37-31-303	7	33-4-101
85	37-31-304	8	33-4-503
86	37-31-305	9	33-10-203
87	37-31-308	10	33-12-107
88	37-31-311	11	33-16-222
89	37-31-312	12	33-17-102
90	37-31-323	13	33-17-211
91	37-34-201	14	33-17-220
92	37-34-305	15	33-17-301
93	37-35-103	16	33-17-401
94	37-40-302	17	33-17-503
95	37-42-304	18	33-17-1203
96	37-42-308	19	33-17-1205
97	37-47-101	20	33-17-1502
98	37-47-201	21	33-18-232
99	37-47-304	22	33-19-105
100	37-50-304	23	33-20-105
101	37-51-204	24	33-20-704
102	37-51-303	25	33-20-1101
103	37-51-305	26	33-22-101
104	37-51-603	27	33-22-140
105	37-53-104	28	33-22-508
106	37-60-304	29	33-22-1501
107	37-66-304	30	33-22-1502
108	37-67-303	31	33-22-1513
109	37-67-321	32	33-22-1514
110	37-68-201	33	33-22-1515
111	37-68-304	34	33-22-1516
112	37-68-305	35	33-22-1517
113	37-68-307	36	33-22-1803
114	37-68-310	37	33-24-103
115	37-68-312	38	33-28-105
116	37-69-304	39	33-28-202
117	37-69-305	40	Repealer
118	37-69-306	41	Effective dates
119	37-69-401	42	Retroactive applicability
120	37-72-102	43	Applicability
121	37-72-202	470	1 87-2-522
122	37-72-305	2	87-2-104
123	37-76-109	3	87-2-511
124	50-16-201	4	Codification instruction
125	50-74-312	5	Coordination instruction
126	80-8-207	6	Effective date
127	Repealer	471	1 87-1-271
128	Effective date	2	87-1-266
468	1 Motorized nonstandard vehicle (Voided by sec. 11, Ch. 468) (Enacted as 61-1-101(34))	3	87-1-267
		4	87-1-269
		5	87-2-702

	6	Codification instruction		2	17-7-502
	7	Coordination instruction		3	41-5-130
	8	Effective dates		4	Codification instruction
	9	Termination (Voided by sec. 7(2), Ch. 471)		5	Effective date
472	1	60-3-201	483	6	Retroactive applicability
	2	80-7-508		1	39-31-103
	3	80-7-801		2	Effective date
	4	80-7-811	484	1	87-2-514
	5	80-7-814		2	87-2-515
	6	80-7-815		3	Codification instruction
	7	Effective dates		4	Coordination instruction
473	1	45-9-202		5	Effective date
	2	46-23-1031 (Replaced by sec. 6, Ch. 360)	485	1	Appropriation
	3	Coordination instruction		2	Effective date
474	1	39-73-101	486	1	82-4-254
	2	39-73-103		2	82-4-361
	3	39-73-104		3	82-4-441 (Voided and replaced by sec. 4, Ch. 486)
	4	39-73-107		4	Coordination instruction
	5	39-73-109		5	Saving clause
	6	Appropriation		6	Contingent voidness
	7	Effective date	487	1	75-1-1001
475	1	33-23-501			76-4-1001
	2	33-23-502		2	75-1-1002
	3	33-23-503			76-4-1002
	4	33-23-507	3	3	82-4-1001
	5	33-23-508		4	82-4-1002
	6	33-23-509		5	75-2-401
	7	33-23-510		6	75-2-413
	8	33-23-511		7	75-2-514
	9	33-23-512		8	75-2-515
	10	33-23-513		9	75-5-611
	11	33-23-514		10	75-5-631
	12	33-23-515		11	75-6-109
	13	33-23-519		12	75-6-114
	14	33-23-520		13	75-10-228 (Voided and replaced by sec. 9, Ch. 443)
	15	33-23-521		14	75-10-417
	16	33-23-522		15	75-10-424
	17	33-23-523		16	75-10-542 (Voided and replaced by sec. 10, Ch. 443)
	18	33-23-524			75-10-1222
	19	33-23-525		17	75-10-1223
	20	33-23-526		18	75-11-223
	21	33-11-105		19	75-11-516
	22	Codification instruction		20	75-11-525
476	1	77-6-302		21	75-20-408
	2	77-6-306		22	76-4-109
	3	Effective date		23	82-4-141
477	1	61-8-714		24	82-4-254
	2	61-8-722		25	82-4-361
478	1	61-5-105		26	82-4-441 (Voided and replaced by sec. 4, Ch. 486)
	2	61-5-107		27	Codification instruction
	3	61-5-111		28	Saving clause
	4	61-5-125		29	Contingent voidness
	5	Effective dates		30	Effective date
	6	Applicability		31	
479	1	13-37-107	488	1	7-12-2103
	2	13-37-108		2	7-12-2105
	3	13-27-111		3	7-12-2109
	4	13-37-101		4	7-12-2112
	5	13-37-102	489	1	20-26-601
	6	13-37-103		2	20-26-602
	7	13-37-111		3	20-26-603
	8	Codification instruction		4	2-15-1524
480	1	53-21-132		5	20-26-611
	2	Cost study		6	20-26-612
	3	Effective date		7	20-26-613
481	1	10-2-417		8	Notification to tribal governments
	2	Effective date		9	Implementation
482	1	41-5-2011			

	10	Codification instruction		6	61-3-479 (Voided by sec. 8, Ch. 500)
	11	Effective date — applicability		7	61-3-522 (Voided by sec. 8, Ch. 500)
490	1	20-7-470		8	Coordination instruction
	2	20-7-471		9	Effective date
	3	20-7-472		501	1 Appropriation
	4	20-7-473		2	Notification to tribal governments
	5	20-7-474		502	1 53-6-113
	6	20-7-475		2	Appropriation
	7	20-7-602		3	Effective date
	8	Appropriation		503	1 20-6-206
	9	Codification instruction		2	20-6-318
	10	Effective date		3	20-9-428
491	1	37-14-102		4	Effective date — applicability
	2	37-14-301		504	1 Appropriation
	3	37-14-313		2	2-15-2014
	4	Effective date		3	46-15-411
492	1	7-33-2205		4	Effective date
	2	7-33-2206		505	1 82-4-305
493	1	44-4-310		2	Effective date
	2	44-4-311		506	1 2-15-2025
	3	44-4-312		2	Codification instruction
	4	44-4-313		3	Effective date
	5	25-1-201 (Voided and replaced by sec. 9, Ch. 493)		507	1 49-4-301 (Replaced by sec. 3, Ch. 507)
	6	40-1-202 (Voided and replaced by sec. 10, Ch. 493)		2	61-3-332
	7	40-1-311 (Voided and replaced by sec. 11, Ch. 493)		3	Coordination instruction
	8	Codification instruction		4	Coordination instruction
	9	Coordination instruction		5	Effective date
	10	Coordination instruction		508	1 20-10-126
	11	Coordination instruction		2	Effective date
	12	Effective date		509	1 61-10-124
494	1	81-9-201		510	1 20-6-421
	2	81-9-217		2	20-6-422 (Replaced by sec. 14, Ch. 510)
	3	81-9-220		3	20-6-423 (Replaced by sec. 14, Ch. 510)
	4	81-9-227		4	20-6-424
	5	81-9-228		5	20-3-205
	6	Restricted appropriation		6	20-3-302
	7	Effective date		7	20-3-312
495	1	16-4-414		8	20-6-209
	2	Effective date		9	20-6-307
496	1	Appropriation		10	20-6-704
	2	60-11-111		11	20-9-311
	3	60-11-120		12	Repealer
	4	Effective date		13	Codification instruction
497	1	60-2-220		14	Coordination instruction
	2	Effective date		15	Effective date
498	1	33-15-1105		511	1 16-11-106
	2	Effective date		2	16-11-107
499	1	Definitions		3	16-11-108
	2	Appropriation of bond proceeds		4	16-11-126
	3	Authorization of bonds — condition		5	16-11-128
	4	Planning and design		6	16-11-159
	5	Review by department of environmental quality		7	16-10-306
	6	Legislative consent		8	16-11-102
	7	Requirement for approval of state debt		9	16-11-103
	8	Severability		10	16-11-104
	9	Effective date		11	16-11-111
500	1	15-1-122 (Voided by sec. 8, Ch. 500)		12	16-11-114
	2	19-6-709 (Voided by sec. 8, Ch. 500)		13	16-11-118
	3	61-3-303 (Voided by sec. 8, Ch. 500, and sec. 141, Ch. 596)		14	16-11-119
	4	61-3-321 (Voided by sec. 8, Ch. 500)		15	16-11-120
	5	61-3-332		16	16-11-122
				17	16-11-131
				18	16-11-132
				19	16-11-133
				20	16-11-141

21	16-11-142	16	37-20-403
22	16-11-143	17	37-20-404
23	16-11-144	18	37-20-405
24	16-11-145	19	37-20-406
25	16-11-146	20	39-71-116
26	16-11-147	21	41-1-401
27	16-11-148	22	46-4-114
28	16-11-149	23	50-5-101
29	16-11-150	24	50-5-216
30	16-11-155	25	50-16-201
31	16-11-158	26	50-19-101
32	16-11-507	27	50-20-109
33	53-6-1201	28	52-5-108
34	16-11-129	29	53-6-101
35	Repealer	30	37-20-411
36	Codification instruction	31	37-20-410
37	Effective date	32	Repealer
512	1 41-5-102	33	Name change — directions to code commissioner
	2 Effective date		
513	1 30-10-909	34	Codification instruction
	2 72-3-1101	520	1 53-10-201
	3 72-4-303		2 53-10-202
	4 72-16-906		3 53-10-203
	5 72-34-442		4 53-10-204
	6 Effective date		5 53-10-211
	7 Retroactive applicability		6 53-10-212
514	1 53-6-109		7 Codification instruction
	2 No appropriation	521	1 20-6-110
	3 Effective date		20-25-110
515	1 87-2-903		2 Codification instruction
	2 Coordination instruction		3 Two-thirds vote required
	3 Effective date		4 Effective date
516	1 7-21-1001		5 Applicability
	2 7-21-1002	522	1 Appropriation of bond proceeds
	3 7-21-1003		2 Authorization of bonds
	4 Codification instruction		3 Payment of debt service
517	1 46-18-111		4 Agreement with department of natural resources and conservation
	2 46-18-201		5 Legislative consent
	3 46-18-225		6 Requirement for approval of state debt
	4 46-23-1015		7 Effective date
	5 53-1-203	523	1 15-60-102
	6 53-1-501		2 Appropriation
	7 Effective dates		3 Effective date
518	1 31-3-115	524	1 15-32-701
	2 30-14-1721		2 15-32-702
	3 30-14-1722		3 15-70-601
	4 30-14-1701		4 17-7-502
	5 30-14-1702		5 Coordination instruction
	6 30-14-1703		6 Codification instruction
	7 30-14-1704		7 Effective date
	8 30-14-1705	525	1 15-32-703
	9 33-19-321		2 15-70-369
	10 Codification instruction		3 15-70-301
	11 Severability		4 15-70-304
	12 Effective date		5 15-70-341
519	1 2-15-1731		6 17-7-502
	2 33-22-111		7 Sec. 12, Ch. 568, L. 2001
	3 33-22-114		8 Sec. 13, Ch. 568, L. 2001
	4 37-3-103		9 Repealer
	5 37-8-103		10 Codification instruction
	6 37-20-101		11 Effective date
	7 37-20-103		12 Applicability
	8 37-20-104	526	1 85-2-247
	9 37-20-202		2 85-2-248
	10 37-20-203		3 85-2-249
	11 37-20-301		4 85-2-250
	12 37-20-302		5 85-2-232
	13 37-20-303		6 85-2-233
	14 37-20-401		
	15 37-20-402		

7	85-2-234	7	90-10-302
8	85-2-235	8	90-10-303
9	Codification instruction	9	90-10-304
10	Coordination instruction	10	90-10-305
11	Effective date	11	90-10-306
527	1 Interim study on split estates of mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding	12	90-10-307
	2 5-5-211	13	90-10-308
	3 15-36-331	14	90-10-309
	4 Appropriation	15	90-10-310
	5 Effective date	16	15-30-184
	6 Termination	17	15-31-152
528	1 23-5-612	18	33-2-705
	2 Effective date	19	90-1-112
	3 Applicability	20	Codification instruction
529	1 7-12-2102	21	Severability
	2 7-12-2105	22	Effective date
	3 7-12-2109	538	1 39-6-108
	4 7-12-2113		2 18-2-411
530	1 53-6-101		3 39-6-101
	2 53-21-139		4 39-6-106
531	1 15-6-138		5 Repealer
	2 15-6-201		6 Codification instruction
	3 Sec. 27, Ch. 285, L. 1999		7 Effective date
	4 Sec. 31, Ch. 285, L. 1999	539	1 7-14-301
	5 Sec. 5, Ch. 577, L. 2003		2 7-14-302
	6 Effective date		3 7-14-303
532	1 15-6-134		4 7-14-304
	2 15-6-138		5 Effective date
	3 15-6-201	540	1 State guaranteed tax base aid adjustments for protested valuation
	4 15-6-228 (Replaced by sec. 245, Ch. 542)		2 Effective date — retroactive applicability
	5 15-6-222	541	1 37-50-323
	6 15-6-219 (Replaced by sec. 19, Ch. 532)		2 37-50-324
	7 15-6-223		3 Codification instruction
	8 15-6-204	542	1 10-2-112
	9 15-6-205		2 10-3-801
	10 15-6-207		3 15-1-101
	11 15-6-220		4 15-1-122 (Replaced by sec. 131, Ch. 596)
	12 15-6-224		5 15-1-504
	13 15-7-102		6 15-6-138
	14 15-8-111		7 15-6-201
	15 15-32-405		8 15-6-215
	16 61-3-560		9 15-8-201
	17 61-10-214		10 15-8-202
	18 Codification instruction		11 15-15-201
	19 Coordination instruction		12 15-16-202
533	1 15-15-103		13 15-24-301
	2 15-15-104		14 15-30-121
534	1 10-1-902		15 15-50-207
	2 Effective date		16 15-68-101
535	1 15-30-169		17 20-9-331
	2 50-44-103		18 20-9-333
	3 Codification instruction		19 20-9-360
	4 Applicability		20 23-1-128
	5 Contingent termination		21 23-2-512
536	1 15-1-402		22 23-2-513
	2 15-23-116		23 23-2-515
	3 Fund transfer		24 23-2-519
	4 Effective date		25 23-2-601
537	1 90-10-101		26 23-2-614
	2 90-10-102		27 23-2-616
	3 90-10-103		28 23-2-619
	4 90-10-201		29 23-2-631
	5 90-10-202		30 23-2-634
	6 90-10-301		31 23-2-641
			32 23-2-642
			33 23-2-644

34	23-2-804	92	61-3-412
35	23-2-809	93	61-3-413
36	23-2-818	94	61-3-421
37	30-11-701	95	61-3-422
38	33-23-204	96	61-3-423
39	37-72-101	97	61-3-425 (Voided by sec. 153, Ch. 596)
40	45-5-205	98	61-3-431
41	61-1-101	99	61-3-446
42	61-3-101 (Replaced by sec. 126, Ch. 596)	100	61-3-448
43	61-3-103	101	61-3-456
44	61-3-106	102	61-3-458
45	61-3-107	103	61-3-460
46	61-3-110	104	61-3-465
47	61-3-201	105	61-3-467
48	61-3-202	106	61-3-468
49	61-3-204	107	61-3-474
50	61-3-205	108	61-3-479
51	61-3-206	109	61-3-480
52	61-3-208 (Replaced by sec. 127, Ch. 596)	110	61-3-481
53	61-3-210	111	61-3-501
54	61-3-211	112	61-3-503
55	61-3-212	113	61-3-506
56	61-3-216	114	61-3-507
57	61-3-217	115	61-3-509
58	61-3-218	116	61-3-520
59	61-3-219	117	61-3-526
60	61-3-220	118	61-3-529
61	61-3-221	119	61-3-535
62	61-3-222	120	61-3-537
63	61-3-223	121	61-3-562
64	61-3-224 (Voided by sec. 138, Ch. 596)	122	61-3-603
65	61-3-301	123	61-3-604
66	61-3-302 (Replaced by sec. 140, Ch. 596)	124	61-3-607
67	61-3-303 (Replaced by sec. 142, Ch. 596)	125	61-3-701 (Replaced by sec. 157, Ch. 596)
68	61-3-311 (Replaced by sec. 143, Ch. 596)	126	61-3-702
69	61-3-312 (Replaced by sec. 144, Ch. 596)	127	61-3-703
70	61-3-313 (Replaced by sec. 145, Ch. 596)	128	61-3-704
71	61-3-314 (Replaced by sec. 146, Ch. 596)	129	61-3-707 (Voided by sec. 158, Ch. 596)
72	61-3-315	130	61-3-708
73	61-3-316	131	61-3-709
74	61-3-317 (Replaced by sec. 147, Ch. 596)	132	61-3-711
75	61-3-318	133	61-3-712
76	61-3-321	134	61-3-714
77	61-3-322	135	61-3-715
78	61-3-323	136	61-3-716
79	61-3-324	137	61-3-717
80	61-3-325	138	61-3-718
81	61-3-331	139	61-3-719
82	61-3-332	140	61-3-720
83	61-3-333 (Voided by sec. 151, Ch. 596)	141	61-3-721 (Replaced by sec. 159, Ch. 596)
84	61-3-334 (Replaced by sec. 152, Ch. 596)	142	61-3-722
85	61-3-335	143	61-3-723
86	61-3-342	144	61-3-724
87	61-3-345	145	61-3-725
88	61-3-401	146	61-3-727
89	61-3-403	147	61-3-728
90	61-3-404	148	61-3-729
91	61-3-411	149	61-3-730
		150	61-3-732
		151	61-3-733
		152	61-3-736
		153	61-3-737
		154	61-4-101
		155	61-4-102
		156	61-4-104
		157	61-4-109

MONTANA SESSION LAWS 2005

3350

158	61-4-110		223	61-9-426
159	61-4-111 (Voided by sec. 160, Ch. 596)		224	61-10-102
160	61-4-112 (Voided by sec. 161, Ch. 596)		225	61-10-104
161	61-4-113		226	61-10-123
162	61-4-120		227	61-10-141
163	61-4-121		228	61-10-148
164	61-4-122		229	61-10-206
165	61-4-123		230	61-10-225
166	61-4-125		231	61-11-203
167	61-4-129		232	61-12-101
168	61-4-131		233	61-12-102
169	61-4-141		234	61-13-103
170	61-4-143		235	75-10-532
171	61-4-202		236	76-2-202
172	61-4-204		237	76-2-302
173	61-4-208		238	87-2-803
174	61-4-301		239	87-3-101
175	61-4-302		240	Repealer
176	61-4-306		241	Codification instruction
177	61-4-307		242	Coordination instruction
178	61-4-310 (Voided by sec. 162, Ch. 596)		243	Coordination instruction
179	61-4-404		244	Coordination instruction
180	61-4-501	543	245	Coordination instruction
181	61-4-503		246	Effective dates
182	61-4-504		1	15-7-202
183	61-4-505		2	Effective date — applicability
184	61-4-506		544	1 69-4-501
185	61-4-511			2 69-4-505
186	61-4-519			3 69-4-512
187	61-4-525			4 69-4-513
188	61-5-104			5 69-4-514
189	61-5-112			6 Codification instruction
190	61-5-119		545	1 7-15-4292
191	61-5-121 (Voided by sec. 164, Ch. 596)			2 7-15-4293
192	61-5-208 (Voided by sec. 166, Ch. 596)			3 15-10-420
193	61-6-102	546		4 7-15-4294
194	61-6-301	547		5 71-3-1506
195	61-8-102			6 Codification instruction
196	61-8-201			7 Effective date
197	61-8-210		548	1 45-5-624
198	61-8-310			1 61-5-208
199	61-8-336			2 61-8-441
200	61-8-341			3 61-8-442
201	61-8-354			1 53-1-701
202	61-8-371			2 53-1-702
203	61-8-379			3 53-1-703
204	61-8-380			4 53-1-704
205	61-8-383			5 53-1-705
206	61-8-384			6 53-1-710
207	61-8-401			7 53-1-711
208	61-8-605			8 53-1-712
209	61-8-704			9 53-1-713
210	61-8-713			10 53-1-714
211	61-8-801			11 Performance of required functions
212	61-9-102			12 Codification instruction
213	61-9-103			13 Severability
214	61-9-226			14 Effective date
215	61-9-302	549		1 15-62-301
216	61-9-304			2 15-62-302
217	61-9-321			3 15-62-103
218	61-9-402			4 15-62-201
219	61-9-405			5 15-62-203
220	61-9-406			6 20-25-902
221	61-9-412			7 Codification instruction
222	61-9-415	550		1 15-1-501
				2 17-5-2001
				3 Repealer
				4 Contingent voidness
				5 Effective date
		551		1 53-30-507

	2	Effective date		10	Capital projects — contingent funds
552	1	33-2-708		11	Review by department of environmental quality
	2	33-20-1303		12	University buildings — operation and maintenance
	3	33-20-1313		13	Legislative consent
553	4	33-20-1315		14	87-1-209
	1	53-21-1013		15	87-1-601
	2	53-21-1001		16	Sec. 2, Ch. 557, L. 1999
	3	53-21-1002		17	Sec. 2, Ch. 573, L. 2001
	4	53-21-1006		18	Coordination instruction
	5	53-21-1007		19	Severability
	6	Codification instruction		20	Effective date
554	1	15-7-111		561	1 80-15-212
555	1	7-22-2403		2	80-15-213
	2	7-22-2408		3	Effective date
	3	7-22-2409		562	1 33-2-101
	4	7-22-2442		2	33-2-104
	5	Repealer		3	33-18-401
	6	Effective date		563	1 15-6-157
556	1	87-2-506		2	15-24-3004
	2	87-2-706		3	Tax abatement for wind generation facilities (Voided by sec. 12, Ch. 563)
	3	87-2-803		4	15-6-137
557	1	3-1-102		5	15-6-141
	2	3-5-114		6	15-6-156
	3	3-6-204		7	15-6-201
	4	3-10-101		8	15-24-3005
	5	3-10-118		9	15-24-3006
	6	3-10-115		10	15-24-3007
	7	3-10-116		11	Codification instruction
	8	3-10-203		12	Coordination instruction
	9	3-10-207		13	Coordination instruction
	10	25-33-301		14	Effective date
	11	46-13-110		15	Retroactive applicability
	12	46-17-311		564	1 40-4-204
	13	Repealer		2	40-5-226
	14	Codification instruction		3	40-5-234
	15	Effective date		4	40-5-248
558	1	53-4-260		5	40-5-271
	2	Codification instruction		6	40-5-272
	3	Effective date		7	40-5-273
559	1	15-39-101		8	40-5-277
	2	15-39-102		9	40-6-116
	3	15-39-103		10	Repealer
	4	15-39-104		11	Effective date
	5	15-39-105		565	1 17-7-304
	6	15-39-106		2	53-4-1007
	7	15-39-107		3	53-4-1012
	8	15-39-108		4	Codification instruction
	9	15-39-109		5	Effective date
	10	15-39-110		6	Applicability
	11	15-39-111		7	Termination
	12	15-6-131		566	1 7-15-4295
	13	15-6-208		2	7-15-4282
	14	15-23-101		3	7-15-4283
	15	15-23-501		4	7-15-4284
	16	15-23-502		5	7-15-4285
	17	Transition		6	7-15-4286
	18	Codification instruction		7	7-15-4288
	19	Saving clause		8	7-15-4290
	20	Effective date		9	7-15-4292
	21	Retroactive applicability		10	7-15-4293
560	1	Definitions		11	7-15-4301
	2	Capital projects appropriations and authorizations		12	7-15-4304
	3	Fund transfer		13	Codification instruction
	4	Capital improvements		14	Effective date
	5	Land acquisition appropriations		567	1 7-12-4422
	6	Dams			
	7	Transfer of funds			
	8	Capitol land grant revenue			
	9	Planning and design			

MONTANA SESSION LAWS 2005

3352

568	1	17-3-240	28	30-2A-527
	2	Effective date	29	30-2A-528
569	1	Sec. 9, Ch. 712, L. 1991	30	30-3-102
	2	Sec. 4, Ch. 542, L. 1995	31	30-4-104
	3	Sec. 5, Ch. 542, L. 1995	32	30-4A-105
	4	Sec. 1, Ch. 411, L. 1997	33	30-4A-106
	5	Sec. 4, Ch. 398, L. 2001	34	30-5-123
	6	Sec. 5, Ch. 398, L. 2001	35	30-7-102
	7	Sec. 6, Ch. 398, L. 2001	36	30-7-103
	8	Sec. 7, Ch. 398, L. 2001	37	30-7-104
	9	Effective date	38	30-7-106
570	1	20-7-118	39	30-7-107
	2	20-1-101	40	30-7-201
	3	Codification instruction	41	30-7-202
	4	Effective date — applicability	42	30-7-203
571	1	2-4-623	43	30-7-204
	2	Effective date	44	30-7-205
	3	Applicability	45	30-7-206
572	1	50-32-501	46	30-7-207
	2	50-32-502	47	30-7-208
	3	44-4-1001	48	30-7-209
	4	44-4-1002	49	30-7-210
	5	44-4-1003	50	30-7-301
	6	44-4-1004	51	30-7-302
	7	44-4-1005	52	30-7-303
	8	Codification instruction	53	30-7-304
	9	Effective date	54	30-7-305
573	1	87-2-202	55	30-7-307
	2	87-2-711	56	30-7-308
	3	87-2-803	57	30-7-309
	4	Effective date	58	30-7-401
574	1	18-2-501	59	30-7-402
	2	18-2-502	60	30-7-403
	3	18-2-503	61	30-7-404
	4	7-5-2301	62	30-7-501
	5	7-5-4302	63	30-7-502
	6	18-1-102	64	30-7-503
	7	18-2-103	65	30-7-504
	8	18-4-124	66	30-7-506
	9	20-6-606	67	30-7-507
	10	20-9-204	68	30-7-508
	11	67-11-201	69	30-7-509
	12	Codification instruction	70	30-7-601
575	1	30-1-101	71	30-7-602
	2	30-1-102	72	30-7-603
	3	30-1-107	73	30-8-113
	4	30-1-201	74	30-9A-102
	5	30-1-204	75	30-9A-203
	6	30-1-205	76	30-9A-207
	7	30-1-208	77	30-9A-208
	8	30-1-209	78	30-9A-301
	9	30-1-210	79	30-9A-310
	10	30-1-211	80	30-9A-312
	11	30-1-212	81	30-9A-313
	12	30-1-301	82	30-9A-314
	13	30-1-302	83	30-9A-317
	14	30-2-104	84	30-9A-338
	15	30-2-310	85	30-9A-601
	16	30-2-323	86	30-18-103
	17	30-2-401	87	30-18-115
	18	30-2-503	88	45-6-315
	19	30-2-506	89	71-3-125
	20	30-2-509	90	Repealer
	21	30-2-605	91	Codification instructions
	22	30-2-705	92	Saving clause
	23	30-2A-103	93	Applicability
	24	30-2A-514	576	1 33-16-230
	25	30-2A-518		2 33-16-203
	26	30-2A-519		3 61-2-102
	27	30-2A-526		4 Codification instruction

577	1	20-25-421	2	87-2-113
	2	Saving clause	3	87-2-202
	3	Repealer	4	87-2-301
	4	Effective date — applicability	5	87-2-306
	5	Termination	6	87-2-401
578	1	87-5-132	7	87-2-403
	2	Codification instruction	8	87-2-411
579	1	Appropriation of cultural and	9	87-2-501
		aesthetic grant funds — priority of	10	87-2-505
		disbursement	11	87-2-508
	2	Fund transfer	12	87-2-510
	3	Appropriation of cultural and	13	87-2-701
		aesthetic grant funds	14	87-2-704
	4	Reversion of grant money	15	87-2-708
	5	Reduction of grants on pro rata	16	87-2-711
		basis	17	87-2-801
	6	Effective date	18	87-2-803
580	1	Appropriations from treasure state	19	87-2-805
		endowment state special revenue	20	Codification instruction
		account	21	Coordination instruction
	2	Approval of grants — completion of	22	Effective date
		biennial appropriation	586	1 13-15-209
	3	Conditions and manner of	2	13-1-303
		disbursement of grant funds	3	13-2-301
	4	Appropriations from treasure state	4	13-2-402
		endowment state special revenue	5	13-2-514
		account for emergency grants	6	13-10-201
	5	Appropriations from treasure state	7	13-10-204
		endowment special revenue	8	13-10-209
		account for preliminary	9	13-10-211
		engineering grants	10	13-10-302
	6	Sec. 1, Ch. 435, L. 2001	11	13-13-212
	7	90-6-703	12	13-13-301
	8	90-6-710	13	13-14-112
	9	90-6-715	14	13-14-113
	10	Appropriation from treasure state	15	13-15-107
		endowment regional water system	16	13-15-111
		special revenue account (Voided by	17	13-15-206
		sec. 13, Ch. 580)	18	13-16-412
	11	Approval of funds — completion of	19	13-16-414
		appropriation (Voided by sec. 13,	20	13-17-211
		Ch. 580)	21	13-21-206
	12	Conditions — manner of	22	13-27-410
		disbursement of funds (Voided by	23	Codification instruction
		sec. 13, Ch. 580)	587	1 10-1-606
	13	Coordination instruction	2	15-16-102
	14	Notification to tribal governments	3	15-24-202
	15	Effective date	588	1 17-5-703
581	1	5-11-407	2	90-1-201
	2	17-7-304	3	90-1-202
	3	17-7-502	4	90-1-203
	4	Codification instruction	5	90-1-204
	5	Effective date	6	90-1-205
	6	Retroactive applicability	7	17-7-502
582	1	2-18-601	8	Fund transfer
	2	2-18-604	9	Codification instruction
	3	Effective date	10	Effective date
583	1	61-5-212	589	1 15-35-108
	2	61-8-733	2	Effective date
584	1	15-6-134	590	1 17-5-820
	2	15-6-138	2	Effective date
	3	15-6-201	591	1 16-4-310
	4	15-7-102	2	16-4-311
	5	15-8-111	3	16-4-312
	6	15-32-405	4	16-1-404
	7	61-3-560	5	16-4-401
	8	61-10-214	6	16-4-501
	9	Effective date	7	16-1-424
	10	Retroactive applicability	8	Codification instruction
585	1	87-2-809	9	Effective date

592	1	15-36-303	6	33-22-2006	
	2	15-36-304	7	33-22-2007	
	3	Effective date	8	33-22-2008	
	4	Applicability	9	33-22-2009	
	1	15-31-901	10	53-2-216	
	2	15-31-902	11	15-30-185	
	3	15-31-903	12	15-31-130	
	4	15-31-904	13	15-30-111	
	5	15-31-905	14	15-30-303	
	6	15-31-906	15	15-31-511	
	7	15-31-907	16	33-22-1815	
	8	15-31-908	17	45-6-301	
	9	15-31-909	18	53-6-1201 (Replaced by sec. 13, Ch. 287)	
	10	15-31-910	19	53-2-217	
	11	15-31-911	20	Codification instruction	
	12	17-7-502	21	Effective date	
	13	Codification instruction	22	Applicability	
593	1	15-31-901	596	1	61-3-115
	2	15-31-902	2	61-1-101(1), (2), (9)	
	3	15-31-903	3	61-3-116	
	4	15-31-904	4	61-3-117	
	5	15-31-905	5	61-3-118	
	6	15-31-906	6	61-3-119	
	7	15-31-907	7	7-14-112	
	8	15-31-908	8	10-3-1307	
	9	15-31-909	9	15-1-101	
	10	15-31-910	10	15-1-116 (Voided by sec. 130, Ch. 596)	
	11	15-31-911	11	15-1-117	
	12	17-7-502	12	15-1-121	
	13	Codification instruction	13	15-1-122 (Voided by sec. 131, Ch. 596)	
	14	Severability	14	15-8-201	
	15	Effective date	15	15-8-202	
	16	Applicability	16	15-15-201	
	17	Termination — carryforward	17	15-24-301	
594	1	15-1-206	18	15-24-302	
	2	15-1-216	19	19-6-709	
	3	15-1-216	20	23-1-105	
	4	15-23-214	21	23-2-502	
	5	15-30-142	22	23-2-511	
	6	15-30-149	23	23-2-513	
	7	15-30-209 (Voided by sec. 41, Ch. 594)	24	23-2-515	
	8	15-30-241	25	23-2-616 (Voided by sec. 132, Ch. 596)	
	9	15-30-321	26	23-2-619	
	10	15-30-323	27	23-2-818	
	11	15-30-1112	28	49-4-301 (Replaced by sec. 3, Ch. 507)	
	12	15-31-111	29	49-4-302	
	13	15-31-141	30	49-4-303	
	14	15-31-503	31	49-4-304	
	15	15-31-510	32	49-4-305	
	16	15-31-531	33	61-1-104	
	17	15-31-543	34	61-1-111	
	18	15-35-112	35	61-1-501	
	19	15-36-314	36	61-1-508	
	20	15-37-102	37	61-1-513	
	21	15-37-105	38	61-1-603	
	22	15-37-106	39	61-3-107	
	23	15-37-108	40	61-3-109	
	24	15-37-114	41	61-3-201	
	25	15-37-210	42	61-3-203	
	26	15-38-106	43	61-3-212	
	27	15-38-110	44	61-3-217	
	28	15-38-111	45	61-3-218	
	29	15-50-308	46	61-3-220	
	30	15-51-109	47	61-3-224 (Replaced by sec. 138, Ch. 596)	
	31	15-53-145			
	32	15-53-146			
	33	15-59-112			
	34	15-60-206			
35	15-65-115				
36	15-66-206				
37	15-67-206				
38	15-68-513				
39	15-72-114				
40	Repealer				
41	Coordination instruction				
42	Effective dates				
43	Applicability				
595	1	33-22-2001			
	2	33-22-2002			
	3	33-22-2003			
	4	33-22-2004			
	5	33-22-2005			

48	61-3-301	106	61-4-121
49	61-3-302 (Replaced by sec. 140, Ch. 596)	107	61-4-222
50	61-3-303 (Replaced by sec. 142, Ch. 596)	108	61-4-223
51	61-3-311 (Replaced by sec. 143, Ch. 596)	109	61-4-310
52	61-3-312 (Replaced by sec. 144, Ch. 596)	110	61-5-103
53	61-3-313 (Replaced by sec. 145, Ch. 596)	111	61-5-111
54	61-3-314 (Replaced by sec. 146, Ch. 596)	112	61-5-114 (Replaced by sec. 163, Ch. 596)
55	61-3-315	113	61-5-115
56	61-3-316	114	61-5-121 (Voided by sec. 164, Ch. 596)
57	61-3-317 (Replaced by sec. 147, Ch. 596)	115	61-5-206
58	61-3-321	116	61-5-208
59	61-3-322	117	61-8-442
60	61-3-324	118	61-10-222
61	61-3-325	119	61-11-102
62	61-3-331	120	61-11-105
63	61-3-332	121	61-11-204
64	61-3-333	122	61-11-210
65	61-3-334 (Replaced by sec. 152, Ch. 596)	123	76-2-202
66	61-3-335	124	76-2-302 (Voided by sec. 167, Ch. 596)
67	61-3-345	125	Repealer
68	61-3-347	126	Coordination instruction
69	61-3-401	127	Coordination instruction
70	61-3-402	128	Codification instruction
71	61-3-403	129	Coordination instruction
72	61-3-407	130	Coordination instruction
73	61-3-412	131	Coordination instruction
74	61-3-415	132	Coordination instruction
75	61-3-421	133	Coordination instruction
76	61-3-422	134	Coordination instruction
77	61-3-425	135	Coordination instruction
78	61-3-426	136	Coordination instruction
79	61-3-431	137	Coordination instruction (61-3-101(50))
80	61-3-433	138	Coordination instruction
81	61-3-446	139	Coordination instruction
82	61-3-456	140	Coordination instruction
83	61-3-458	141	Coordination instruction
84	61-3-463	142	Coordination instruction
85	61-3-464	143	Coordination instruction
86	61-3-474	144	Coordination instruction
87	61-3-479	145	Coordination instruction
88	61-3-481	146	Coordination instruction
89	61-3-501	147	Coordination instruction
90	61-3-503	148	Coordination instruction
91	61-3-520	149	Coordination instruction
92	61-3-522	150	Coordination instruction
93	61-3-527	151	Coordination instruction
94	61-3-529	152	Coordination instruction
95	61-3-535	153	Coordination instruction
96	61-3-560	154	Coordination instruction ((3)(b) enacted as 61-3-337)
97	61-3-561	155	Coordination instruction (Enacts 61-3-337)
98	61-3-562	156	Coordination instruction
99	61-3-701 (Replaced by sec. 157, Ch. 596)	157	Coordination instruction
100	61-3-707	158	Coordination instruction
101	61-3-721 (Replaced by sec. 159, Ch. 596)	159	Coordination instruction
102	61-4-101	160	Coordination instruction
103	61-4-102	161	Coordination instruction
104	61-4-111 (Replaced by sec. 160, Ch. 596)	162	Coordination instruction
105	61-4-112 (Replaced by sec. 161, Ch. 596)	163	Coordination instruction
		164	Coordination instruction
		165	Coordination instruction (Voided by sec. 164, Ch. 596)
		166	Coordination instruction
		167	Coordination instruction
		168	Effective dates

MONTANA SESSION LAWS 2005

3356

597	1	15-24-1402	5	15-36-332
	2	15-24-1501	6	Notification to tribal governments
	3	15-24-1502	7	Codification instruction
	4	15-24-1802	8	Coordination instruction
	5	15-24-1902	9	Effective date
	6	15-24-2002	10	Applicability
	7	15-24-2404	604	1 10-1-1101
598	1	7-6-2225	2	10-1-1102
	2	7-6-2226	3	10-1-1103
	3	15-37-117	4	10-1-1104
	4	90-6-304	5	15-30-116
	5	90-6-331	6	Appropriation — periodic transfer
	6	Effective date		— reversion
599	1	Appropriation — mission	7	Codification instruction
		assessment and promotion for	8	Effective date — applicability
		military and national guard	9	Termination
		installations	605	1 2-15-246
	2	Effective date	2	Appropriation
600	1	10-2-601	3	Codification instruction
	2	10-2-603	4	Coordination instruction
	3	17-7-502	5	Effective date
	4	Effective date	606	1 15-66-101
601	1	50-1-111	2	15-66-102
	2	Fund transfer — appropriation	3	15-66-201
	3	Codification instruction	4	Sec. 20, Ch. 390, L. 2003
	4	Effective date	5	Cessation on collection and
602	1	60-11-113		expenditure
	2	60-11-114	6	Effective date
	3	60-11-115	7	Termination
	4	60-11-116	607	1 Short title
	5	17-7-502	2	First level expenditures
	6	60-11-120	3	Severability
	7	60-11-117	4	Appropriation control
	8	60-11-118	5	Program definition
	9	60-11-119	6	Personal services funding — 2009
	10	Codification instruction		biennium
	11	Effective date	7	Totals not appropriations
603	1	90-6-1001	8	Effective date
	2	15-35-108	9	Appropriations
	3	15-36-304	10	Rates
	4	15-36-331		

2004 BALLOT ISSUES

Constitutional Amendments			<u>Init.</u>	<u>Sec.</u>	<u>MCA</u>
				8	50-46-207
				9	50-46-210
<u>C.A.</u>	<u>Sec.</u>	<u>MCA</u>		10	37-1-136
40	1	Art. IX, sec. 6, Mont. Const.		11	45-9-101
	2	Submission to electorate		12	45-9-102
41	1	Art. IX, sec. 7, Mont. Const.		13	45-9-103
	2	Effective date		14	45-9-110
	3	Submission to electorate		15	45-9-127
Constitutional Initiative				16	45-10-107
				17	Codification instruction
<u>C.I.</u>	<u>Sec.</u>	<u>MCA</u>		18	Severability
96	1	Art. XIII, sec. 7, Mont. Const.		19	Effective date
	2	Effective date	149	1	10-2-417
Initiatives				2	16-11-111
				3	16-11-114
<u>Init.</u>	<u>Sec.</u>	<u>MCA</u>		4	16-11-119
148	1	50-46-101		5	16-11-202
	2	50-46-102		6	16-11-206
	3	50-46-103		7	53-6-1201
	4	50-46-201		8	Codification instruction
	5	50-46-202		9	Severability
	6	50-46-205		10	Effective date
	7	50-46-206		11	Applicability